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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ORGANIZATION

THURSDAY, 11 MAY 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Swift, Susan, Research Officer, Legislative Research Service





LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, 11 May 1989

The committee met at 1541 in room 151.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect a chairman. Are there any nominations for the position?

Mr Carrothers: I would like to nominate David Neumann as chairman.

Clerk of the Committee: Mr Carrothers has nominated Mr Neumann. Are there any further nominations?

Mr Jackson: And we will keep nominating him until he gets the job done right.

Clerk of the Committee: There being no further nominations, I declare nominations closed and Mr Neumann elected chairman of the committee.

The Chairman: Thank you very much, members of the committee. The second item on the agenda is the election of a vice-chairman. Are there nominations?

Mr Beer: I would like to nominate Yvonne O'Neill as vice-chairman of the committee.

The Chairman: Are there any further nominations?

Mr Jackson: That will teach her to not show up.

The Chairman: We have a letter indicating her willingness to accept. Seeing no further nominations, I declare Yvonne O'Neill elected as vice-chairman.

Ms Poole moves that, unless otherwise ordered, a transcript of all committee hearing be made.

Motion agreed to.

Mr Chairman: Mr Carrothers moves that the chairman, with Mr Carrothers, Mr Jackson and Mr Allen, do compose the business subcommittee; that the said subcommittee meet from time to time at the call of the chairman to consider and report to the committee on the business of the committee, and that substitution be permitted on the subcommittee.

Motion agreed to.

The Chairman: Item 5 we may perhaps wish to refer to the subcommittee. Does that seem like a good suggestion? The clerk indicates he does not have anything to put before us as a proposal. It is just for general discussion. It seems to me something the subcommittee may wish to deal with and bring a recommendation forward on. Do we need a motion or just a consensus? Okay.

With respect to item 6, scheduling of agenda items, I think most of those could be referred to the subcommittee as well, except for the fact that perhaps, since we have already held hearings on Bill 124 and it is my understanding at least that the ministry is prepared to move forward and I believe the committee may be prepared to move forward with clause by clause on Bill 124, we should decide if we are ready to go with that on Monday, Tuesday and Thursday of next week.

Mr Jackson: Before we get on to Bill 124, could we get a basic understanding of what items we may be addressing in the next month? I understand we may be requesting Bill 5 for two days of hearings and that this may be the logical committee to have that referred to.

The Chairman: I was given the information that there might be some discussion by the House leaders and whips on that. However, until it is referred to us we cannot address that.

Mr Jackson: I would not want you to address it; I guess maybe it would not hurt to let the committee know that these items are floating around out there.

The Chairman: You just want to make us aware of it.

Mr Jackson: In procedural terms, the decision has been made by at least one, probably both, opposition parties that it is our desire to have that bill referred to two or three days of public hearings. That usually means it will in fact occur.

The Chairman: Thank you for bringing that to the attention of the committee.

Mr Jackson: Are there any others? was the other part of my question.

The Chairman: Bill 147 has already been referred to us, the Independent Health Facilities Act, and I believe the subcommittee could perhaps address the timing of hearings, etc, with respect to Bill 147.

Mr Jackson: Finally, and I am raising this on behalf of Mr Reville, I would like that at some point a letter go forward asking—I am just serving notice that I would like this committee to consider inquiring about the status of the community mental health private bill and the government's intentions, if any, with regard to that.

The Chairman: Perhaps that could be checked into. It was my understanding, the last time I asked, that Mr Reville was not pressing for it to come forward, because there was some communication between him and the ministry about some government initiatives in that area. But that is informal information I have and perhaps somebody could check that out. There is another private member's bill that has also been referred to our committee, Norah Stoner's.

Mr Allen: I do not have any further information on that score. I think that is the case. I am not sure what the status of those discussions is. We should find that out for you.

The Chairman: Okay. I think most of the matters you raised, Mr Jackson, can be discussed by the subcommittee. Perhaps to get things under way we could start on Monday, recognizing that on Monday we may have limited time,



because—it is hard to predict around here—if there is conclusion of the throne speech debate, members of this committee may wish to be in the House for the windup speeches, in which case we may wish to meet briefly, simply to receive the research report, ask any questions on that and get started. Then we could be into clause by clause by Tuesday.

Mr Jackson: Both Mrs Cunningham and I have difficulty with scheduling on Monday, but in terms of notifying the various interest groups that wish to watch our proceedings, I would like to be able to at least give a certain amount of public notice that we will be proceeding with those items.

The Chairman: Is there agreement to commence Tuesday, then?

Mr Carrothers: Mr Chairman, if I heard you correctly, assuming things are going to go as we expect, the only business we would have on Monday is to deal with the researcher's report, which we might want to go ahead with, and that would leave us most likely starting on Tuesday.

Mr Jackson: My presumption was that we would do that activity Tuesday, which would then give us Wednesday, which is also budget day, to prepare ourselves for any further amendments we may wish, out of courtesy, to table up front Thursday. That was my assumption, that the brief meeting would not be on Monday, there would be a very brief business meeting on Tuesday and we would commence clause by clause on Thursday. That would give a full week's notice to the groups that had considerable interest in our activities in this area, give them at least public notice that we would be into clause by clause at that time.

The Chairman: Basically, that we not meet on Monday is your proposal. On Tuesday we would hear the researcher's report and perhaps receive tabling of any proposed amendments from opposition and government, if they are ready by Tuesday, just so we are aware of them. Then on Thursday we would be ready to get down to business on the clause by clause. Is that your proposal?

Mr Jackson: Yes.

The Chairman: Is there a consensus on that?

Ms Poole: I would just ask a question. Since it has been suggested that Wednesday will be budget day and that on Thursday the opposition parties will give their responses to the budget, does this pose any problem for either Mr Jackson or Dr Allen in attending the meeting on Thursday?

Mr Jackson: Probably.

Ms Poole: I thought I should bring that up now rather than have the meeting set and then have them have difficulty attending.

The Chairman: That means we will not get anything done next week.

Mr Jackson: It would not hurt to meet to get the research report. We are looking at some substantive amendments, I tell you that up front. I do not wish to diminish the significance of the research document, but the subsequent Monday would be 23 May, which is not a sitting day, which means we really would not start until 24 May, if my mental calendar is in order.

The Chairman: Ms Swift informs me that there is not as such a research report; there is a report outlining the summary of recommendations from the groups. They can be distributed today.

Ms Swift: That is right. There is also a number of much shorter memoranda in response to specific questions asked by various members during the public hearings. It was my anticipation they would be handed out today so that you could have a look at them over the weekend or whatever.

Mr Jackson: Then why do we not recommend their distribution today and that our first meeting be on 24 May?

Mr Carrothers: And that we do not meet at all next week?

Mr Jackson: We are going to miss Thursday probably, and Monday is awkward, so we get one day Tuesday and then come back a week later.

The Chairman: Why could we not do some business on Tuesday? As chairman, I am duty bound to press on with the business referred to us by the House.

Mr Jackson: You are. I do not think our caucus would be in a position—Tuesday is a caucus day and I will be taking the substantive amendments to which I have referred to our caucus Tuesday, so I hope to be ready by Tuesday. If I am not, then I will be making no excuses about treading water until our amendments are fleshed out properly and ready to go.

Mr Carrothers: I do not think I have any difficulty with waiting until 24 May.

The Chairman: Is it 24 May or 23 May?

Mr Carrothers: It is 24 May.

Ms Poole: Victoria Day is 23 May.

The Chairman: No, that is 22 May. Tuesday is 23 May.

Mr Carrothers: I have no difficulty with waiting for the day after Victoria Day, if we can determine the number of the day.

The Chairman: Could we ask the clerk to perhaps serve notice for meetings on Tuesday and Thursday of that week? In the meantime, perhaps, the subcommittee could get some business done next week. Any other business to come before the committee today?

Mr Allen: I do not know that it needs to occupy any time today, but you may recall that I did raise the question of committee travel when we were sitting last. There was some reference to research to try to prepare some areas in which we had knowledge of either advanced social experiments or programs under way in the social services in particular, possibly with respect to children and family programs, seniors, the developmentally handicapped and others, and that we then have an opportunity to review those as a committee and see whether it was appropriate for us to travel to do some direct questioning and observing of programs in other places.

I gather from research that there is a sense that not enough direction was given on that. Perhaps that is something the subcommittee should take up at its first meeting, in order to give better direction to research about the kinds of information we would like, to provide a base for a decision in committee with respect to travel.



The Chairman: Okay. The subcommittee has discussed that matter and I think it would be appropriate to continue discussions in that area. Any other business? The meeting is adjourned other than for distribution. Could we have the distribution of the report?

Ms Swift: It is being copied.

The Chairman: Would you then distribute it to our offices, including the absent members. Perhaps if we could have a very brief meeting of the subcommittee to determine when next week the subcommittee could meet, that would be helpful.

The committee adjourned at 1554.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT, 1989

TUESDAY, 23 MAY 1989





STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

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Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr Daigeler

Cousens, W. Donald (Markham PC) for Mr Jackson

Hampton, Howard (Rainy River NDP) for Mr Allen

Offer, Steven (Mississauga North L) for Mr Beer

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Schuh, Cornelia, Deputy Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, 23 May 1989

The committee met at 1600 in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

The Chairman: Members of the committee, I call the meeting to order. Before we begin our deliberations on that bill, I would like to point out that I have just circulated copies of the report of the meeting of the subcommittee of the standing committee on social development, and at your leisure you may peruse that. For your information, decisions that were made at the subcommittee meeting are outlined there. It deals with future business of the committee, not with respect to this bill.

Bill 124 is now before the committee and I am in the committee's hands about how to proceed. Should we have discussion on the subcommittee?

Clerk of the Committee: Mr Johnston may want to discuss the subcommittee's report.

The Chairman: Did you wish to raise a question on the subcommittee's report?

Mr R. F. Johnston: I just wanted to know whether there was going to be a point this afternoon for discussion of the subcommittee's report, because it seems to me that I have not heard yet where the heritage language bill is going, except that I have been hearing that the government wants it quickly. I was not sure if that had been discussed or not.

The Chairman: The information which the subcommittee had before it at the time we met on 16 May was that that was not something we needed to concern ourselves with at that meeting. Prior to that meeting, I had heard the same thing you had heard. I have forgotten who brought that information to us, but at meeting we were informed that it has not been referred to us and may not be referred to us.

Mr R. F. Johnston: Fine. We should probably know tomorrow.

The Chairman: Regardless of that, we made the decision to go ahead and advertise on Bill 147, the Independent Health Facilities Act.

Mr R. F. Johnston: Fine.

The Chairman: A number of amendments have been photocopied and circulated. Perhaps we should just do a quick check to make sure everybody has copies of everything that has been circulated. You should have a package of Progressive Conservative amendments all neatly stapled together. Mr Offer is about to circulate two government amendments which he tells me are of a housekeeping nature. Are there NDP amendments as well?

Clerk of the Committee: No.

The Chairman: We have not received any NDP amendments.

Mrs O'Neill: Mr Chairman, I am sorry. Can I go back to the subcommittee report for one second?

The Chairman: Sure.

Mrs O'Neill: How long are the ads going to be in? June 2 is not very far from now; that is why I am sort of concerned. What is the turnaround time on these ads? You had the meeting last week. Is it reasonable to ask people to come forward by 2 June?

The Chairman: It does not mean that they have to have their brief in by 2 June. It means they have to notify us that they wish to appear. The clerk informs me that the ads will be in all of these newspapers this Thursday.

Mrs O'Neill: So that is what, 25 or 26 May?

The Chairman: Yes.

Mrs O'Neill: They would not have five working days to call us, would they?

The Chairman: I would think so.

Mr Carrothers: Also on item 4, given the nature of the legislation it was felt that mostly specialized groups would want to be speaking on it and that the ministry already had the names of 14 or 15 groups it was going to be contacting specifically and be told about this as well.

The Chairman: All of the parties who had up to this point expressed an interest in the bill are being contacted directly.

Mr R. F. Johnston: We have the chair saying that all groups that expressed an interest have been contacted. I am hearing that the ministry has a list of 15 groups. It strikes me that there are more women's groups alone that would be interested in the implications of the abortion clinic side of things on this than that implies. I am a little worried about the turnaround time on this as well, in terms of various elements of the community having a chance to respond. Even though we have that date of 2 June, I wonder whether we cannot right now have an agreement publicly that we will extend that by a couple of days so that people have more time officially to let us know they are coming.

The Chairman: We can always leave the ad stating 2 June, but—

Mr R. F. Johnston: You cannot change them now, I presume. I presume it is too late, but just when people come in—

The Chairman: What day of the week is 2 June? It is a Friday.

Mr Carrothers: I think we may want to wait and see what develops. The ministry is working from the list of groups that had spoken about the legislation and spoken to the clerk about that, so I think we had a pretty fair list of the cross-section of all types of groups that would want to speak on this. Perhaps the committee could make that decision at a later point when we see what happens.



Mrs O'Neill: I think they have six working days if they are going to have time to do that. That seems quite reasonable. I just wanted to know when it was going to be in.

The Chairman: Okay. Are we ready to move along?

Mr R. F. Johnston: I think a lot of these groups are community boards which will have trouble getting together at a meeting to decide whether they should be coming forward and that kind of thing. They are not just the big province-wide organizations that have staff to be able to make that response. I just want to have some understanding that there will be some flexibility for the more grass-roots kinds of groups if they wish to make an appearance, for us to try to accommodate them—not making it easier for individuals; I am talking about groups. As long as we have that understanding. It may not become an issue, as Mr Carrothers says, but if it does I would like some understanding that there is a bit of flexibility there for a few days in the week following.

The Chairman: With the other two bills in my experience that we have held hearings on, we accepted some of the people who came in late, provided we did not take anybody after we started our hearings, but up until then we fitted other people in as requested. I do not think it can be completely open-ended, that you keep adding to it as you hold your hearings, but we took names up until we started the hearings.

Bill 124 is before us. Are we ready to proceed with clause by clause?

Mr R. F. Johnston: I know it is not usual. I can do it when we come to the first clause, if you want, or I can do it now. It is a little unusual for the opposition party not to be moving amendments of one sort or another and I wonder if it might not be appropriate to talk about why. Again, I can do it under the guise of the first clause, if you want, or we can just do it in general, but I would like to get some of that on the record, because during the public hearings portion, when we were questioning and hearing from people, we did not have a chance for dialogue and debate at that stage. Subsequent to those hearings, I would like to make some comments.

The Chairman: Why do you not proceed and give us your comments on that.

Mr R. F. Johnston: The reason we are not moving amendments is not that we support the bill as it stands, that we are delighted with it or anything like that. It is rather that we feel the bill is wrongheaded and is not amendable because of what is at fault here. The flaw in it is the incorrect emphasis by the government on some sort of court-mandated resolution to what the government has considered minor infractions of access rather than major substantive changes in the nature of the custody agreement and arrangement that might be existing for families in the province.

We find that a government which is moving in this direction at this point and is at the same time undermining what few supervised access programs there are in the province is a government which is totally at odds with common sense, is ignoring virtually 100 per cent of the professional groups that came before us giving us advice on this particular bill and is, in my view, not even meeting the needs of those who like parts of the bill.

If I could just deal with this question of supervised access and whether this particular remedy being brought forward is the appropriate one: It does

strike me as the cart before the horse to come up with another court-mandated approach to deal with problems of access when that is what exists presently, even if it is in a somewhat flawed format, according to many people, in terms of people who are aggrieved having to take action under contempt proceedings against individuals who are not providing access as has been agreed to in agreements established under law; I will talk in a couple of minutes about the 10-day notion of this automatically coming before the courts.

1610

To do that at the same time as the Ministry of Community and Social Services has withdrawn its funding from its one experimental program on supervised access, established in Kitchener, and has publicly given its reason for withdrawing that funding as the fact that it does not think it has jurisdiction or should not have jurisdiction in this area, and which has now left that group to flounder with no evaluation process established and no interest by the Ministry of Community and Social Services in even looking at an evaluation of that supervised access project—

This was put out there time and time again when LAMP, the Lakeshore Area Multi-Service Project, which goes under the name Access for Parents and Children, as you know, was arguing that it needed funds to be able to continue its program, which has been established for many years now. This is a real affront to those groups out there who were saying that more formalized options for supervised access must be made available across the province if judges are realistically going to be able to order anybody anywhere to have appropriate access developed, when you have such intransigence, generally speaking, as part of the relationship between the ex-spouses already.

I think most members know that LAMP has now had to close Access. Access no longer exists, the one major program in all of Metropolitan Toronto that did such good work. We got all the statistics about the amazing success rate they had of supervised access and people moving from supervised to unsupervised access and about even violent family members now being able to have an unsupervised situation because of the work they did. That has closed its doors because of lack of funding, quite frankly because of a feud between the Ministry of the Attorney General and the Ministry of Community and Social Services as to who should pick up the bucks for this.

No one has ever said that what LAMP was doing was a bad thing. No one has even suggested that the Kitchener pilot project was not a good thing or that it was not doing good work. But because neither ministry would accept responsibility for the funding for this kind of very basic support to families that are having real crisis problems in their relationships in the province—and the kids are the victims of it—this government cannot provide bucks for that.

But it can come forward with this kind of legislation, which virtually all the professional groups have told us will not work, is not the solution. As a member of the Legislature and a member of this committee now for 10 years, it is mind-boggling to me that this is the action, the first step, this government is willing to take, based on no statistical evidence, no studies on how the contempt laws are working or not working in the province, only anecdotal evidence; no statistical information about how these supervised access programs are working and how they might be better used for these kinds of problems than those presently in place. Just no information at all.

Yet this government moves, one would think, because of the response,



regrettably, around the whole question of enforcement of payment of moneys arranged to be made to women, generally speaking, who are left in custodial situations and who then have had real trouble in getting their money. This is the quid pro quo to the men's organizations and Ross Virgin and others who came before us and pleaded their kind of case. This is what this is.

In the eyes of the Attorney General (Mr Scott), it is a very small and insignificant bill. It does not deal with the substantive problems or the substantial change that takes place in access. That is all dealt with under present legislation, and this will deal with only small, irksome matters that will rise up from time to time and then will enable the aggrieved person to bring a matter before the courts within 10 days to have it dealt with there; with an amazing list of wrongful denial of access, if enumerated—

Everybody in the legal community who has come before us has told us it is just going to cause all sorts of headaches out there. The legal community cannot understand how anybody believes we can possibly get this 10-day thing to actually work, when nowhere else in the court system does it work that way. And the rightful question is raised: Why is it that this particular group of aggrieved people in the system should get something that nobody else can get anyway, which is this 10-day turnaround, especially if it is for something that is insignificant, according to the Attorney General's line on this whole thing, in terms of its effect in the whole overall question of access enforcement?

I just do not see that tinkering with this bill makes any sense for us as an official opposition at all. We are much better off as the official opposition to let you hoist yourselves with your own petard and basically run with this, infuriate the women's groups in the province, show the lawyers of the province that you really do not want to listen to them and their expertise and all the things they have said to us before this committee, and throw this thing out as the political sop you thought it was going to be.

We do not want to be any party to that. Therefore, we have not brought forward amendments, as the third party has, to try to somehow jig this law you have brought forward in ways that make it more responsive to certain kinds of groups. I understand their motivation for doing that.

From our perspective, you have gone the wrong way. The first thing to do would be to deal with the supervised access question and to deal with that in an appropriate way, get that infrastructure in place around the province, instead of destroying it and instead of fighting between departments as to who should pay for this. When you have that infrastructure in place, then maybe look at options, as this might have, especially if you are saying it is only for a very few in the system and that it is something you do not think is of huge significance in terms of the overall access matter. Otherwise, this is an affront to women's groups, as you have been told time and time again.

As we go through the clauses, we will remind you of what the various groups have said on those clauses in terms of the attack on them. You can live with it, but I do not think it is something that is salvageable. I think that was the message you were being told, and for some reason or other you have decided to persist.

The Chairman: Thank you for clarifying your position and the position of your party on that stand regarding amendments.

Mr Cousens: I would like to begin by acknowledging the presentations

that were made by a great number of people during our public hearings. Knowing how sensitive we as parliamentarians have to be to what the public is interested in, I think it was significant that we were able to hear most of those who wanted to come. If I may be clear on it, I do not think we missed any group that did want to come, did we? I think we were able to receive them all, and the fact is that their points are now part of the public record.

Predating this bill, I tabled a bill in the Legislature called Bill 45. This was part of the 34th session of the Legislature. I tabled it on 24 November 1987. I carried it forward from the days of Terry O'Connor, who was the MPP from Mississauga East, or out in another part of the world, anyway, near Metro: In Oakville. It was An Act to amend the Children's Law Reform Act. It really brought a number of amendments to the bill, which are really an important aspect to this whole bill we are dealing with now. I was anxious to do it then. There is not much opportunity when you are in opposition to be able to bring those bills forward.

Therefore, when the Attorney General brought his amendments, I decided to take the amendments I had made to the bill and bring them forward in the form of these amendments I have tabled before the committee today, dealing with a number of issues that are part of the public record I have made previously.

It is better to preface these concerns prior to the clause by clause, because we have already tabled these amendments and I will be moving them or causing them to be moved by other members of our caucus in order that they can be considered by this committee.

1620

I think there has to be continued sensitivity to the concerns of all the people who are involved in a marriage breakup and custody of children. I am more and more impressed by the sensitivity that is being shown by all of us. The government and all parties are sharing a common expression; it is just how we deal with it. That becomes the issue.

I guess when we started looking at the government bill, we realized we did not like many parts of it and it was one of those decisions we had to make: Do we try to make it better or do we just critique it and try to put it down? We decided to try to improve it where possible, and in that spirit bring forward a series of amendments in the hope that other members of this committee will also consider very seriously the amendments we have that deal with mediation, that deal with grandparent access, that deal with custody. These are issues we would very much like the committee to look at. The supervised access centres are also a matter of concern which I raise through these amendments.

I know the House has a lot of things ahead of it in the next little while and this committee has a large agenda. I would just like to take a little while now, if I can, to touch on where my amendments are going so that you will see the context, how they will fit in, because the bill is large. When you deal with the original document, you are talking about some 40 pages or so. I am more interested in the intent which three major amendments I have will have on the bill and then we can deal with it there. They are all important and it is just a matter of how we will deal with it. We will be raising further amendments which are now in the process of being drafted by legal counsel.



First, if I may, we have an amendment here that would give grandparents a special access under the law. What we are really suggesting is that there is a role for grandparents in law which is not presently there in actual words. I think it is in many cases. I think there are many examples of where grandparents are given access and where there is a special effort being made, but it is not in the law as we know it today, so we have an amendment that will in fact add this clause where, "A parent or grandparent of a child"—that is inserting the word "grandparent"—"or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of or access to the child."

I think what we are really saying here is that grandparents have been communicating with us how they feel they have been victimized by the process that exists now, where they have been excluded from the access they feel is their right. What we are trying to do through these amendments is to ensure that, over and above the ultimate responsibility of the parents—and I underline that, that the parents certainly have the prime responsibility for the children—the grandparents also be given the opportunity of the basic right to access their grandchildren. If possible, I would like to have these amendments considered and become part of the bill.

I could go into the rationale for that. I do not think this is necessarily the time. I could do it now, but I would rather just indicate that that is the intent of what we are trying to do; the grandparents and others through their presentations gave the rationale, or some of the rationale, that is part of that.

Let me reiterate that it is not our desire to pre-empt the role or responsibility of the parents, who have the prime responsibility for the children, but I can just tell you that in my conversations with numerous grandparents, it has really been a source of great anxiety and great concern that they did not have any legal rights at all, and this would help correct that.

We have a series of amendments, as well, which really will emphasize the process of mediation. Mediation is touched upon in the bill but is not given the kind of importance or coverage or explanation that I believe our amendments will give it. Our purpose here is to highlight the importance of mediation where warranted. It will give clearer guidelines for mediation and it will also define more clearly what the qualifications should be of a mediator.

I also have a motion that deals with the mediation process, which would call for the replacement of a mediator if necessary, and outlines his duties more clearly.

As well, I have another motion; because of the legalese, they will come through when I am giving them, as we get to the specific points. It has to do with how a consultation can take place between the mediator and the individual parties, which could deal with the situation if there is any danger of physical or emotional harm as a result of a joint meeting; it allows for another process to be carried out by the mediator should this be the case. That is simply a way in which, if in the mediator's opinion a party is likely to suffer physical or emotional harm as a result of meeting with another party to the mediation, the mediator may conduct a mediation by meeting with the parties separately. It gives some extra flexibility for the mediator in trying to work out a situation for them.

Also, when you talk about mediation, mediation can have a tremendous impact on people who, until they have been asked to go and give it a try---The fact that they are being asked to do it might compel them to be a little more conciliatory and try to work through the problems they have, which otherwise might have to be escalated into other levels. I believe that when you have the mediation being recognized by the court, being documented by the court, the evidence going to be accepted by the court, that process then has a new weight and a new level of importance, among others, that might give it a chance of working for many people.

We have also tried to address how you pay for mediation. What I am really suggesting there is that the court may require one party to pay all the mediator's fees and expenses if the court is satisfied that the payment would cause the other party or parties serious financial hardship. It also can require the court to force the persons to pay for the mediator's fees.

I have tried to expand and develop this whole mediation concept. I sincerely hope that the government will give this one very serious consideration.

I deal in a further amendment with the way in which the mediator's report is going to be dealt with. What we are really trying to do there is lend legal force to the mediator's report. I think that will give more strength to that process.

By these motions, in giving greater emphasis to the mediation process, we also respect the ultimate discretion and judgement that remains with the court. Our motions really highlight the important involvement, in the educated opinion of the mediator, as a result of his or her involvement in the process. In fact, what we see is that the process of mediation and a mediated settlement should be able to facilitate and assist in the determination of a judgement by the court. That is part and parcel of those motions.

There is another issue that is part of our thinking. Again, it goes back to the original Bill 45 that has been tabled for a couple of years now and deals with supervised access centres to address the concerns of custodial parents, wherein situations evolve where a parent is afraid of kidnapping or afraid of abuse. We are very fortunate, in the Progressive Conservative caucus, to have the member for London North (Mrs Cunningham), who is experienced in this area.

Mr R. F. Johnston: You certainly are.

Mr Cousens: We are lucky in many ways, but her experience in this area is a specialty that has been of great assistance to us as a caucus. I hope it will be to the government as a whole, because of Mrs Cunningham's background. I know we have all had personal experiences, but I just want to give special reference to her abilities and also her judgement on this.

1630

We have prepared an amendment that would introduce supervised access centres. Our purpose here is to lessen the tension between spouses during visitations by children and therefore create a more stable environment for the child. I think a great deal can be said on that, and I hope Mrs Cunningham will take some time and explain some of her thinking on this.

These are the three major areas we have amendments on. We are in the

process of preparing further amendments on supervised access centres, which we will table before the committee in the next very short period of time. Legal counsel is working with us. It is just a matter of when we can have them. Fortunately, I think there is going to be enough time before the next committee hearing that we will be able to table them before you get to them. I would ask for some flexibility when we go through it. There will be certain parts of the bill we will ask you to stand down so we can deal with them later.

I think the bottom line is that we believe we, as legislators, have a chance to do something to help families, to help children and to help our society. There is a very unique and rare opportunity here for us by virtue of just the great number of people who are affected by the problems of dealing with children and marriage breakup.

I sincerely hope the committee takes our amendments in the spirit in which they are being offered. I think we have tried to listen to the presentations that were made by different groups that came before this committee and recognize that there is not unanimity in any of the solutions we are talking about. It really is one of those areas in which you are dealing with human beings. But on balance, let's come up with a number of options that begin to touch on these lives to make them come out with a happier long-term benefit.

We touch on the grandparents. We touch on mediation; we see mediation as an excellent way in which we can deal with the issues. We also see supervised access centres as something that is important.

There are other parts of the bill. Indeed, when we are doing clause by clause, there are a number we would like to come back on, but we find it very difficult to come up with another way of saying it. So we will debate it. Who knows? There may be some inspiration that comes to any one of us when we get to certain parts of the bill. Maybe then we can find ways of amending it.

Those are just a few thoughts from the PC caucus. I hope Mrs Cunningham will comment a little further on it.

Mr R. F. Johnston: We cannot force her to talk.

Mr Cousens: I cannot force her to talk, that is true. Maybe if she is recognized by the chair, she will have a chance.

Interjection: You cannot force her to stop.

The Chairman: Your last comments are particularly interesting, as Mrs Cunningham is next on my list for some comments.

Mrs Cunningham: Thank you, Mr Chairman, and colleagues from all parties. All of your comments are true. Getting started and getting stopped are not a problem for me.

On this particular issue, I certainly agree with Mr Johnston and with Mr Cousens. I think the saddest thing about this piece of legislation is that people think they are going to be helped by it. Fathers think they will get access more readily and I do not believe they will. Grandparents think someone might listen to them: This is Mr Cousens's amendment, which, if we get that far, I will be supporting, because we do not have the services right now that include grandparents as part of the discussions in families. Therefore, we will put it into the bill and grandparents will perhaps think that, by law, in



a way in which they are not served now, they are going to be able to visit with their grandchildren under supervised custody arrangements or as part of mediation.

I should say that the saddest part about the bill is that I think it has probably been drafted for the wrong reasons, and anything that has been drafted for the wrong reasons usually does not work. I think it is geared towards a very small part of our population, and that very small part is people who often would not receive access, for a lot of reasons.

The other part is that politically—I am not sure whether this is true or not. The understanding I have is that the government made some laws that seemed to help mothers, and now we are going to make some laws that seem to help fathers. To me, that is a political reason for writing legislation.

I think the bottom line when it comes to family matters is that basically common sense prevails. Second, in these times when we are supposed to be thinking very seriously about our resources, the government should be thinking very seriously about where it does put its money.

Just the drafting of this legislation over a long period of time and the public hearings and the hopes and dreams of people who came before this committee—And those were the very few who came before this committee thinking the legislation would help them at all, and there were very few; that kind of time, and I am now talking about the emotions, is time we should be very appreciative of. But when it comes to paying the staff and the people who are involved in the legislation and, further down the road, paying the court system, the mediators, all of the people who seem to want to push our families into court, I think it is a very poor direction this province is moving in.

Basically, we are making more work for lawyers and not solving any problems at all for families. What really ought to be happening is that where families members are not able, during times of extreme crisis, separation and divorce, most of whom have not been there before—It is not unlike a first-time parent trying to raise a first child. That is tough enough first time round, even second and third time for some of us. But to go through separation and divorce, one of the greatest stresses of anyone's life, and then have to face going through access for children—

Always, we are listening to the best interests of the child. This piece of legislation is only in the best interests of the courts, whatever that means. I do not even think the solicitors who were here would have advised this legislation at all. In fact, they told us they would not.

Really, the bottom line is support services. I just received a letter today and there are very few letters like this. "I hope that you continue to maintain your open mind and help us. I think this bill is going to help us in"—believe it or not—"supervised access centres, in grandparents' rights." It goes on to talk about other benefits and initiatives, none of which are even addressed in the bill at all, so people have unrealistic expectations. These are handwritten letters.

We asked the researcher to tell us about what is going on to help us in this legislation, and I think all committee members were part of that, because most of us were very interested in supervised access programs in Ontario. It is true that I played a very small role in one of them in London, but over a fairly long period of time.

I was quite shocked to see that since 1981, that is, some eight years, we really have not made good use of the research, the program experiences and, quite frankly, the services and the gains from those services by moving at all in a direction to improve upon those services.

Mr Johnston mentioned LAMP. It is absolutely shocking to think that some 71 children every month are being served in that program—in 1987, there were more than a thousand visits, and in 1988, again more than a thousand visits; we are looking at a very small program really, where a United Church supported it—and it is being closed down.

1640

In Waterloo, the program has only been going for some 17 months. The Ministry of Community and Social Services funded that program in the way of a demonstration grant. These are the kind of programs we are looking at and are evaluating so we can either implement or say they are not working. For some eight years we have had some knowledge of what is working out there, and over a period of I do not know how many days, more than 90 per cent of the people coming before this committee said this is what we need: We need more supervised access centres.

We can go on to talk about who sends the referrals. In the program in Waterloo, half of the referrals were through the court orders and lawyers. Other sources include police, women's shelters and family and children's services.

In London, it speaks for itself. The program has been in operation since 1981. It serves 70 families a month, 205 children; more than a thousand visits a year in 1988-89. Go on to talk about the two programs in Peel. In Sarnia-Lambton, a very new program; they were so ecstatic about it. It is just two months old now. The one in Pickering just started last summer.

The problem with these programs, as we are advised—I think the Family Court Clinic in London wrote a most informative letter to all of you. What they talked about was their real problem in attempting a lobby for public funding. They talked about conflicting views of the Ministry of the Attorney General, the Ministry of Health and the Ministry of Community and Social Services. When one keeps passing the buck from one ministry to the other around a very important service in our society—basically, it is there to meet the needs of children—it is very frustrating for the service providers out there, for the agencies and for boards and directors, to know just where this government's priorities are.

I could go on and further discuss the reason I think we should be voting entirely against Bill 124, but I really do not think there is very much point. Unfortunately, as a member of a committee that has had some 90 per cent of the people telling us in public hearings that what we really need out there are programs and what we are getting is a law that we neither want nor need, I think this government is determined to move ahead with its bill.

Regretfully, I find myself, and I can speak for my colleague the member for Markham (Mr Cousens), in a position to make some amendments which we think will improve upon it, give more support to mediation, which, in whatever way it can work is working now, I think; give more support, hopefully, because then the government may be pressured by it—if not by members of the public, certainly judges, lawyers and families in the court system—to provide services; and again, to provide some real understanding and recognition of the

real need and desire of grandparents to see their grandchildren and for children to benefit from most of their visits and company.

It is with those regrets that I make these remarks. I think we will probably see the members voting in favour of Bill 124 in spite of extensive public hearings and in spite of a very real message from the public that what we need are services; in the best interests of the child and families, supervised access, services and centres are needed across this province. Thank you for the opportunity, Mr Chairman, to make those remarks.

The Chairman: We have had introductory comments to the bill and we will now move to consideration of the various sections of the bill and amendments thereto.

Section 1:

Ms Poole: I have an amendment to subsection 20(4a).

The Chairman: Is that an amendment which has been circulated?

Ms Poole: Not yet. I just finished writing it.

The Chairman: Would you move your amendment and then the clerk will make copies for us?

Ms Poole: This is just in response to many members who came before us and said that it is not always in the best interests of the child to encourage and support the child's continuing parent-child relationship with one another. Mr Owen and I in particular were concerned that this be clarified.

The Chairman: Ms Poole moves that subsection 20(4a) of the act, as set out in section 1 of the bill, be amended by striking out "in the best interests of the child" in the fourth line and inserting in lieu thereof "if it is in the best interests of the child to do so."

We will get copies of that made. I am wondering, while we are waiting for copies, whether Mr Offer would like to make some general comments about the purpose of section 1 of the bill. Would you make those comments now? By that time, we should have our copies.

Mr Offer: As we know, through our consultative hearings we heard a fair bit of consultation and discussion on just about every one of the sections we are going to be dealing with in clause by clause.

We are proposing the first section of the amendment, which adds subsection 4a to section 20 of the Children's Law Reform Act, for two purposes. First, it makes a positive statement that parents shall co-operate where to do so would be in the best interests of the child and, second, it builds the basic foundation upon which the legal foundation for the creation of the new obligation to exercise an entitlement to access is founded. This foundation is absolutely necessary in terms of the enforcement contemplated by the custodial parent under subsection 35a(5).

As I take a look at the section in terms of the amendment which has just been moved, it seems to be just a clarification of this particular section; being in the best interests of the child. It clarifies the intent which was founded in this section, and as such there is no objection to it.



Mr R. F. Johnston: This is just a point of order, I guess: First, how do you want to proceed? We just had a description of how the motion stands, the intent. Are we considering it on the floor yet or do you want us to discuss this and have Ms Poole then move it again now that we all have copies, which we did like to do? I was going to respond to the intent question.

The Chairman: Since I did go to giving Mr Offer the opportunity to indicate the intent of section 1, if there is no objection from the committee, even though we accepted the amendment, I suggest we consider some response on the comments of Mr Offer, and then we will move specifically to the amendment.

Mr R. F. Johnston: Or we can deal with both at once, if you want.

The Chairman: Okay, carry on.

Mr R. F. Johnston: Why do we not move the amendment and then we can debate it in that context?

The Chairman: I was trying to give you an opportunity to make your comments.

Mr R. F. Johnston: That is all right.

The Chairman: The amendment is before you. Discussion on the amendment? Ms Poole, did you wish to make some comments on your amendment?

1650

Ms Poole: Yes. I just very briefly had indicated the reason for this. I would like to further clarify that particularly the large number of women's groups that came before us made it very clear that it is not always in the best interests of the child for the child's parental relationship with the other parent always to be upheld and supported. A number of us were very concerned in this regard. I think it has to be clarified that it is definitely the best interests of the child which determines whether this is indeed the case. That is just a point of clarification for why Mr Owen and I were very concerned about this section.

Mr R. F. Johnston: We have an interesting and substantive disagreement here, it seems to me, between the drafters of the legislation and the member. I do look forward to the return of Mr Owen as well, given the numbers on the committee, if this were to go forward.

What we had in the intent of the legislation as I saw it was something different from what was just expressed by the parliamentary assistant. The way I had understood it and groups had interpreted it was that there is a presumption involved in this that it is in the best interests of the child. That is what is different from past legislation, the notion that the continuing relationship between parent and child is necessarily in the best interests of the child. Many groups then would say, "That is mildly in conflict with subsequent sections to do with parenting abilities, to do with the whole question of family violence."

What the member is suggesting is that the "best interests" obligation which is presently there in law and in the rest of section 20, one can presume, as one reads the rest of the present section 20 in the act, needs to apply. In fact, she is suggesting that there be no change. If you look at section 20, the only thing you might ask is: Why bother with the member's

motion at all, when the "best interests" qualification is well laid out there already, and the presumption of people having rights to apply for custody or access is already established in that subsection?

What I like about this, of course, is that the cat is among the pigeons: The member has neatly brought in an amendment which is contrary to the intent of the initial section. It has not been ruled out of order and is therefore a legitimate qualification on other aspects of that section, and is therefore not out of order, because it is just changing one portion of that motion.

But it does change the underlying philosophy, as I see it, which has been laid down here, and certainly the understanding of men's rights groups about what subsection (4a) was all about, that for the first time in legislation the presumption of joint parental connection after a split-up would now be encouraged and that that is different from the past. I am heartened by this particular amendment and anxious to take the vote as quickly as possible.

The Chairman: Mr Cousens, comments on the amendment?

Mr Cousens: Just to ask the honourable member who placed this amendment before us—I do not see an awful lot of difference between what was there and what you are suggesting by your amendment. I think the primary reason for the bill always in the minds of all of us is truly the best interests of the child, and that is implicit to any action being made. If I read your point of view as purely just emphasizing, you are putting down "if it is in the best interests of the child." When would it not be, and when would they make any difference in dealing with this section by virtue of your amendment than otherwise?

Ms Poole: If I could clarify, I think there is a substantive difference in the way subsection 20(4a) is dealt with in Bill 124 and in my amendment. In Bill 124, it says: "...each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other." It is presumptive that it is in the best interests of the child to so do.

I think what was pointed out to us on a number of occasions by people who came before our committee was that there are instances where it is not in the best interests of the child to foster that relationship with the other parent. I think the issue of paramount importance to all of us, not only in these hearings but in this legislation, should be the best interests of the child. I see there is quite a difference between what I proposed and what is here right now.

Mr Cousens: I am glad I sought clarification, because it really opens up the question of judgement which is going to be made now, which complicates that judgement which is going to be made by the judge or by anyone else dealing with a family situation whether it is going to be in the best interests of the child.

Now you have really asked another question before anything else is done, that is, whether it is going to be in the best interests of the child; therefore, there could be a fairly significant defence made, on the part of anyone, as to the impact that any decision it is going to have on the child, without assuming in the first place that the child's rights are understood as paramount. Could it not raise considerable problems and issues in the disposition of justice as it affects the child in the case now? Are we now

going to be able to have extended periods of time to determine whether or not it is in the child's best interests?

Ms Poole: I guess where I have a slight difference of opinion from the honourable member is that I feel it is the child's interests that should be paramount. That should be determined before we go any further with this legislation or with the Children's Law Reform Amendment Act itself.

Mr Cousens: I guess I am surprised that the parliamentary assistant has given such quick approval to your amendment. I am hearing you and I am just trying to apply it to situations we will be dealing with. Now we are going to say, "We want to spend some time looking at those best interests." I assumed that was fundamental to everything we were doing. Now there is really another level of questioning that is going into it. I think we should deal with that in greater detail before we pass this motion.

Mr Carrothers: I wanted to comment particularly, because I had not read this section the way Mr Johnston had nor did I agree with his understanding of what this section means. I go back to the point that was made by me and others during the hearings, that in section 24 we go through to determine what custody will be and what the rights to access will be and nothing in there states that you will create a mandatory situation.

I think the comments you made, Mr Johnston, relate to the Divorce Act, which does indeed have a presumptive section. This section is simply saying that once you have determined that custody should be as it is and once there should be access, then the parents have to co-operate to make that situation work, which I think is a very different presumption from presuming that maintaining a parental relationship must always take place. This is saying that once the courts have determined that there should be a continuing relationship, then the parents need to co-operate.

As I said during the hearings, I think that is a very important statement. It is a very important addition to our law, because you are making a mandatory requirement of co-operation which in some cases is not there now, but not in the broad sense of Mr Johnston's interpretation. I had not seen this as terribly revolutionary, and I think Ms Poole's amendment is really doing nothing more than reinforcing that it is in the best interests of the child that the parents co-operate.

The main determination, as I said, comes under section 24, which I think we will talk about a bit later. The ordering of this legislation may be confusing in that we are talking about rights that come out of later sections. This right or this obligation is set out in section 20, which is before section 24. Obviously, numerically it means that perhaps we are looking at it before we look at the main section under which the determinations of custody and access are made.

1700

Mrs Cunningham: I do not like this subsection 20(4a) for all the reasons that the people who came before the committee did not like it, that is, that the way it is written it is assumed, even over long periods of time, that two people meeting together is always in the best interests of the child. So I welcome the amendment. It relieves the point that was made so many times that there is pressure on parents to meet even when they do not feel it is in the best interests of the child. Because that statement was made so many times, I think the amendment, with an "if" there, presents us with a real life situation.



I do not think we need it, because I know it really is meant to support parts of section 35a, which I do not like, and I am now talking specifically about subsections 5 and 6, which I simply do not like. However, in the interest of trying to improve upon a piece of legislation that is neither wanted nor necessary, I would certainly support this amendment, because it is an improvement.

Mr Hampton: I only want to echo what has been said already by some other members of the committee. I think we should all realize that what we are dealing with here is not the parents' law reform act or even the grandparents' law reform act. It is the Children's Law Reform Act. We are really dealing with children's rights and responsibilities to children and obligations to children.

I want to say that I think the amendment that has been proposed for this section is a good amendment if for no other reason than that it reinforces and points out again that the paramount interest at all times shall be the best interests of the child. It clarifies that language in a way in which I think it should be clarified.

In making that comment I want to respond in part to the comments Mr Carrothers has made, because if you read the existing act you find that this term, "in the best interests of the child," is found throughout it in many sections. While it may be true that custody or access is to be determined on the basis of the best interests of the child, other sections also refer again and again to it being "in the best interests of the child."

For example, subsection 20(2): "A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child and must exercise those rights and responsibilities in the best interests of the child."

I think the amendment as proposed is entirely appropriate, because it states more clearly that the duty to support a continuing parent-child relationship with the other parent shall only exist if it is in the best interests of the child. Therefore, I think it is a good amendment. It is one I will support.

Mr R. F. Johnston: This changes my attitude to the bill enormously in terms of whether we should move amendments. If one of the founding precepts is going to be changed, and I am delighted that it will be, then other amendments will follow. In fact, I will move a subamendment to this section to do with children's rights as well.

I want to make it very clear what has taken place, because members should really understand what the language here says. I would like to just read the present section before we amend it, to make it clear where the emphasis is here, which is substantively different from anything we have seen before and why many groups picked on it. It says, "Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child,"—presumed, in my words—"encourage and support the child's continuing parent-child relationship with the other."

In all other matters where you see the wording of "in the best interests of the child," it is a presumption that there is a burden of proof that it is in the best interests of the child. In this case, there is an absolute presumption that this is in the best interests of the child.

That is the foundation for this particular act. It is wonderful that you now wish to change that. I am glad, and since you do, I will move an amendment following this to make sure that the child's wishes are undertaken as we determine best interests in this section and we will get this actually to be children's rights legislation, like it should be, and not what it has been. That is great. I am just delighted by this change in government policy.

Mr Offer: I am delighted to participate in this debate on section 1 and the amendment moved by Ms Poole.

The first point to be made is that the purpose of this particular section is to create the legal foundation upon which the custodial parent can have some enforcement towards the noncustodial parent in the exercise of access. That type of enforcement is contemplated in subsection 35a(5) of the amendments.

My understanding from the amendment moved is that the member wished to make it patently clear that it would be in the best interests of the child; this type of positive statement that parents co-operate where to do so, of course, would be in the best interests of the child.

It seems from the discussion which has been ongoing, and I have listened to the opposition members on this, that the wording in terms of the proposed amendment—I mean the bill and not the amendment proposed by the member—is sufficiently clear to show that this positive statement is in the best interests of the child. As such, the amendment, the purpose of which was to make it patently obvious that it would be in the best interests of the child, is unnecessary.

As such, we feel such an amendment to this particular section is unnecessary.

Mr R. F. Johnston: Ah.

Mrs Cunningham: We wondered what you would say. It was a great effort.

Mr R. F. Johnston: What Mr Cousens should have done, rather than asking a question, was to have moved the question. If we had moved the question now, the embarrassment would not have been temporary, it would have been a new amendment back at third reading to change the bill around again.

The Chairman: Any further discussion on this amendment?

Interjections.

Mrs Cunningham: Why does it always take the legal people? This is not even a necessary piece of law. Can we not just sit down and vote? It makes it clear; the pressure is off the parents. Everything the public said is trying to be responded to in this amendment, so why do we not just do it? We spend so much time arguing about words. This is a good example, is it not?

The Chairman: Ms Poole, would you like to wrap up discussion on the amendment?

Mrs Cunningham: Stick to your guns, Dianne.

Mr R. F. Johnston: I am sure she will. That would be the thing to do if she could just (inaudible).

Ms Poole: Thank you, Mr Johnston, for those words of confidence.

I have just had extensive discussions with legislative counsel and the parliamentary assistant and all sorts of people about the motion. There is some doubt that if we move this amendment which I have proposed, it will be inconsistent—stop laughing—with the balance of the bill, so I will regretfully withdraw the amendment.

Mr R. F. Johnston: What a shame.

Mr Ballinger: That is no surprise. Come on.

Mr R. F. Johnston: Am I to understand that the member has withdrawn the amendment to which she spoke so articulately just a few minutes ago in terms of the reason this was important and in conflict with the government's perspective because she has been browbeaten by the Attorney General's staff? I cannot believe—

1710

The Chairman: Mr Johnston, you are raising questions of motive.

Ms Poole: I would just clarify for Mr Johnston that of course there is absolutely no browbeating, but as sometimes happens, a member can miss certain aspects or certain ramifications of an amendment, so I will withdraw the motion.

Mr Offer: The member had as her sole concern that this particular foundation be in the best interests of the child, and I think the concerns and the issues which she raised are extremely important. The clarification she had hoped to achieve in the bill is one which was shown through the bill to be unnecessary, but certainly her concern is well taken and well founded.

The Chairman: I do not think these discussions really are in order. The amendment has been withdrawn. Are there any further amendments to—

Mr Cousens: It has been withdrawn, but I would like to move this amendment. The government has brought it forward—

Interjection.

Mr Cousens: Well, a government member has brought it forward, and I happen to have been persuaded by her arguments. I was sitting on that proverbial fence as I was dealing with it and trying to work it through, so this amendment that has been withdrawn—

The Chairman: Will you move the amendment? I asked if there were any further amendments.

Mr Cousens moves that subsection 20(4a) of the act, as set out in section 1 of the bill, be amended by striking out "in the best interests of the child" in the fourth line and inserting in lieu thereof "if it is the best interests of the child to do so."

Mr Cousens: I would like to acknowledge the assistance of Dianne Poole in helping with the wording and also in persuading me of its value. I really compliment her and Mr Owen, I think it was, a nonpractising lawyer, for his assistance in putting this together.



Mr Ballinger: He is still practising. Did you not read his conflict-of-interest declaration in the paper?

Mr Cousens: No, I have been skipping that.

The Chairman: The amendment is before you.

Mr R. F. Johnston: As a point of information, which does not exist, of course, Mr Chairman: Is Mr Owen expected this afternoon? I saw him earlier and I wonder if he will be back. If he is, I am sure it would be appropriate to ask for a 20-minute call on the vote on this matter so he can come in and exercise his vote to help us win this amendment. I think it would be quite helpful.

The Chairman: Are you ready for the question? All those in favour of the amendment, please indicate. Opposed? The clerk informs me that you cannot abstain.

Mr Cousens: Could we have a recorded vote?

The Chairman: A recorded vote has been requested.

The committee divided on Mr Cousens's motion, which was negatived on the following vote:

Ayes

Cousens, Cunningham, Hampton, Johnston, R. F.

Nays

Ballinger, Carrothers, Offer, O'Neill, Poole.

Ayes 4; nays 5.

The Chairman: Are there any further amendments to section 1? Shall section 1 carry?

Section 1 agreed to.

The Chairman: Mr. Cousens moves that the bill be amended by adding thereto the following section:

"1a. Section 21 of the said act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

"'21. A parent or grandparent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of or access to the child.'"

Mr R. F. Johnston: On a point of order, Mr Chairman: Unless we, for some reason, are leaving subsection 20(4a) open, I do not understand why it is we do not have to deal with that first. This is a separate section, so we should go back to the substance of the debate here, it seems to me.

The Chairman: We carried section 1.

Mr R. F. Johnston: I thought we voted on the amendment.

The Chairman: No. I asked, "Shall section 1 carry?" and then I declared it carried.

Mr R. F. Johnston: I am sorry. I did not hear you say that. I will listen more carefully, as I had an amendment.

The Chairman: So we are moving to section 1a. Mr Cousens, speaking to your amendment.

Mr Cousens: Thank you, and there is another amendment following. I really wish Dianne Cunningham were not right when she says the bill is probably not going to make a great deal of change to the actual workings of things, especially when you are dealing with this one issue.

But it has more than a symbolic meaning when you are dealing with the importance of grandparents having a sense of caring, love and a continuing relationship with their grandchildren. All you have to do is understand the heartache of those people who have not had that opportunity which has been removed from them. All you have to do is think of that family.

I will use one I know well. The couple broke up, and while they were breaking up the children stayed with their grandparents. The grandparents continued to look after those children for an extended period of time until finally, when the daughter-in-law gained access to the children, the grandparents bundled up the children with all their toys and all their belongings and they went off with their mother.

The mother not only moved away from town, but out of the province, and that becomes a whole other series of problems altogether. The grandparents have never seen their grandchildren since. We are not going to handle the interprovincial problems and some of the intrajurisdictional problems, but even within our own province, there is a real sense of loss. It is worse than a death for those who have loved and cared for these children and then, under the eyes of the law, the courts or anyone else, have no rights.

That is a situation that has happened not once, not twice, but many, many times. Is this not a way of trying to rectify a problem? Is this not a way at least of recognizing in the law that there is a right of grandparents to access, under the parents? I do not think we ever want to take away the primary value of the parents' relationship. We know that is supreme, but we also know there is a basic right of access for grandparents to their grandchildren. All I am trying to do through this amendment is, with your support, give that a sense of a possibility.

Grandparents are important in the process of what children are all about in our society. Maybe we are living in an age in which we no longer have the grandparent involvement in bringing up children that we had. In fact, my grandmother lived in our house with us for many years until she passed away. How many others did, in a different age when we did not have this urban culture when you are separated from your greater intimate family and you no longer have that possibility? I know that in the rural community where I was raised, it was a common practice that the grandparents were a part of that family unit.

I think it is in natural law, as well, where the grandparents have had a very basic and fundamental involvement with children. In different societies

and cultures, it has been even more prevalent than in our own. In fact, our whole definition of a family has changed even in the eight years since I have been a member of the Legislature, because I now, as I have matured, understand the role of single-parent families and the role of fathers bringing up children.

1720

I realize that we today have many different definitions of what a family is. I just think that when you are dealing with children and you are dealing with grandparents who have been part of the linkup to those children, who have something to offer, who want to offer—I am sure there will be situations in which there will be some grandparents who do not want to have that link. If that is the case, then fine. But there will be others who would like to be able to gain that access, even if it is limited, even if it is only for a short time.

It does not go to great lengths to say how much it can be, but at least it respects those grandparents' ability to apply to the court and ask for access. It could be for a very limited time. What they are granted might not be anything close to the amount they want, but at least they will have had that option of knowing their request will be considered and has some basis in this act.

I present that one, and there is a subsequent amendment coming forward as well that further elaborates on it. I will just touch on that now so you gain the intent. It really highlights, and I will quote it now, "the importance of maintaining emotional ties between the child and his or her grandparents." That is something that has an ongoing relationship.

We all know there are many different ties you can have. Let's, at least in the eyes of the law, allow this to be a reality for those situations in which grandparents may want to exercise it. There are some here in the committee room today, and I know of many other grandparents who have raised this issue with me. I am sure they have to other members of the Legislature as well. So I move it in that spirit.

Mr Offer: At the outset I would question whether the first section, section 21, is in fact in order, as it is dealing with a section which is not founded within the bill we are discussing. I do not bring that objection in terms of the following amendment, because it clearly does deal with a section within the bill, but I do question whether this one is in order.

My point with respect to the matter is and has always been during our public consultative process that even when persons representing grandparents' groups or grandparents themselves came before the committee, there was not, to my knowledge, a single incident where a grandparent came before the committee and said he did not have standing to go before a court to ask specifically for access.

In fairness, they may not have been pleased with the final decision of the court, but there was not a single incident where a grandparent did not have standing to appear before the court. The point I would make is the reason is that the right of a grandparent, or any other person by the way, is already found within the legislation in section 21, where it states, "A parent of a child or any other person may apply to a court for an order respecting custody...or access."



My first point is that I do not know whether the first amendment Mr Cousens has moved is in fact in order. Second, if it is shown to be in order, it is unnecessary because of the fact that the current legislation does provide, in clear language, the right of a grandparent to go before a court to ask for custody or access. Even the consultation process in this committee, in terms of those who have been representing grandparents and have been in that court system, has proved the case in that no one has ever been denied standing in trying to make out his case. That is the way in which the law is framed, because there has to be that right to a grandparent.

So my response is that, if it is found in order, it is unnecessary to pass this particular amendment. It is unnecessary because of, first, the fact of the legislation which is now part of the Children's Law Reform Act and, second, the consultation and the hearings that we heard from the grandparents themselves.

The Chairman: Mr Offer raises the question of whether or not this particular amendment is in order. I had that question myself, and in checking with the clerk and legislative counsel, the clerk advises me that an amendment shall not introduce a change to a portion of the act which is not referred to in the bill. However, with unanimous consent of the committee, it can be allowed to be placed before the committee for its consideration. Legislative counsel thought it was on the borderline between in order and out of order.

That was the advice the chairman received, so I thought I would allow the amendment to be placed. No one objected to its being placed. I took that to be unanimous consent to allow it to be placed.

Mr R. F. Johnston: On a point of order, Mr Chairman, if I might. This is an interesting ruling.

The Chairman: Is there unanimous consent?

Mr R. F. Johnston: Before you ask, I want to question a couple of things that you have just raised, because they are interesting precedents which are very useful tools for opposition members, and therefore I want to be clear in this.

I do not have an obligation or there is no onus on me in terms of my having given consent to something merely because I did not raise an objection. I would want you to understand that.

I did raise with you privately that this was probably out of order and was instructed that you thought it was marginal, and therefore it could be in order. From my perspective as an opposition member, it is a very useful thing for you to rule this in order, as you have just done, because it allows me—

The Chairman: No.

Mr R. F. Johnston: You certainly have. I will explain to you how ruling things in and out of order takes place in a second. By doing so, you have now allowed us to be able to raise things which are not explicitly covered under sections of this act, and therefore I would be able to introduce a whole range of children's rights amendments to the previous section 20, for instance.

What is incumbent upon the chairman is to tell somebody at the earliest opportunity whether his motion is in or out of order, and he does that before

argument is placed about the quality of the substance of the motion.

Mr Cousens moved his motion and was not heard to be out of order from the chair. Therefore, implicitly, it is in order from the chair. It was not challenged by anybody specifically who had motivation to do so, and then the substance of the argument was heard in full by Mr Cousens.

Then we had a response from the parliamentary assistant, who said, "I think this is out of order," and then spoke to the substance of it, which of course is also not in order. If you want to question whether something is in order, then you say, "Mr Chairman, I don't think this is in order and I have raised that question with you now for a judgement."

What we have is the bewildering situation where members of the committee, instead of the chairman, are now responsible for determining whether things are in order. As I say, from my perspective, it has been quite useful to know now that I can move these things, that they may not be in order but you will not tell me so until I have made my argument or until the parliamentary assistant later on, after my argument, has decided he does not like it.

That means I will be able to move a whole series of amendments which you will politely hear and then hear me explain why they are so important to the bill, and we will not get around to determining whether they are in or out of order until the parliamentary assistant decides that there might be some concern here and then debates them before he asks you to make a decision.

The Chairman: Having had the question of this amendment drawn to the chairman's attention as to whether or not it is in order, I rule that the amendment is not in order.

Mr R. F. Johnston: When was that? Did that happen recently?

The Chairman: I now so do, as I indicated.

Mr R. F. Johnston: Oh, I see.

The Chairman: The previous speaker, Mr Offer, indicated that he questioned whether or not this amendment was in order, and having had that put to me, I rule the amendment out of order.

1730

Mr Cousens: First of all, I challenge the chair, and let me just explain why. This bill that we are dealing with, the Children's Law Reform Amendment Act, is dealing with children and the total relationship between them and their families. If you are going to be as restrictive as you now are—

The Chairman: Order, please. The question of the chair's ruling is not debatable. If you are challenging the chair, I simply put the question: Shall—

Mr Cousens: Is there any way in which my motion can stand and we can have some debate on it?

The Chairman: The clerk has advised me that in previous matters where an amendment has been placed which is not dealing with a section of the act which is referred to in the bill, it can be permitted with the unanimous

consent of the committee. I have ruled it out of order and you have challenged my ruling. Therefore, shall the chair's ruling be sustained? All those in favour, please indicate? Opposed? The chair's ruling is upheld.

Mrs Cunningham: On a point of privilege, Mr Chairman: Otherwise, what we have now is something we thought was going to be debated here. The parliamentary assistant has already given his reasons. He has spoken actually to the amendment.

Mr Offer: No.

Mrs Cunningham: Yes, I wrote down what you said about it.

Mr Offer: If I might respond to that, the first thing I stated was that I do not believe this amendment is in order, and I brought that to the chairman's attention. I said it was not in order because it dealt with a section of the Children's Law Reform Act, that particular section of which is not an amendment in Bill 124. Then I said, "If the chair rules it is in order," and went into my argument. I did not make a condition to that particular argument. The way you phrased it is not correct.

Mr Cousens: Is there a chance that there is unanimous feeling from the committee to receive this amendment?

The Chairman: I have been asked to put the question, as the clerk has indicated, with precedent. I have been asked to put the question and I thank the committee for upholding the ruling, but I—

Mrs Cunningham: Mr Chairman, with respect, I would like my reasons for supporting this motion to be put on the record, the same way the parliamentary assistant has put his reasons why he thought we should not be supporting it. I have written down what he said, and it has nothing to do with procedure. I respect what you said, but you did speak to the substance of the amendment and I want to speak to it too.

So if you have things out of order, if we have something to say about this, I think we should be able to say it. Otherwise, you had better strike it out of Hansard. Find a way to deal with my problem, because I am in favour of it and I want to say why.

The Chairman: Order. The question has been asked of the chairman to put the question to the committee: Shall the amendment be permitted to be placed before the committee? Unanimous consent is required. Is there agreement to allow the amendment to be placed? No, I do not see unanimous consent.

Mrs Cunningham: Then we have a procedural problem.

The Chairman: I do not believe we have a procedural problem. The mover of the motion placed his motion and did speak to it. I was listening very carefully to the arguments. The parliamentary assistant indicated he thought the motion was not in order. We have dealt with that matter, and I think we can move on.

Mrs Cunningham: And then he spoke to it. He presented his arguments. I do not agree with his arguments and I would like to go on record as saying I do not agree with them and why.

The Chairman: I think you have done so.



Mrs Cunningham: Quite frankly, saying that "or any other person" takes care of a grandparent—I do not think a grandparent is any other person. I think Mr Cousens's amendment was to say just that: In these changing times, since this act was written, even in the last year or so, a grandparent is not "any other person" and should be recognized. We listened to those presentations all during the hearings. If they were not speaking to the bill, I think they should have been told that.

Mr R. F. Johnston: I understand the problem we are having in terms of the frustration of the member on this, because the matter was not dealt with before the debate started. Whether it is a response to it or whether it is my ability to respond to Mr Cousens is another matter.

Just to get some clarity maybe, to help Mr Cousens in the time we have available, we have now dealt with section 20 and you are now saying that is concluded and is not to be reopened, I gather. One of the options would be if a majority on the committee—sorry, two thirds of the committee, is it, for reopening? What is it for reopening?

The Chairman: Unanimous consent.

Mr R. F. Johnston: Unanimous consent. I guess we will not get it then.

My suggestion would have been that a motion of this sort might have been in order if it had been moved under section 20, as compared with the new section 21. There is a subsection there, if I might read it to you. Subsection 1 says, "Except as otherwise provided in this part, the father and the mother of a child are equally entitled to custody of the child." At that point, if the member wanted a matter to be raised as to a hierarchy of rights, which would include grandparents, it might have been in order to do it.

It is stretching the rules somewhat, in my view, to go back preceding a new amendment. Usually the tradition is that if you bring in a subsection 4a to section 20, a subsection 5 might be possible or certainly a subsection 4b would be possible, but not necessarily an amendment to subsection 1. If there were some understanding that it would be in order, perhaps members of the committee would allow this debate about grandparents' rights and hierarchical rights, which is going to take place anyhow, to take place under an appropriate section.

I would be interested to know from the chairman whether some kind of an amendment to subsection 20(1) would be in order, dealing with that matter of rights custody. Sorry, not custody; it would not be. It would have to be another subsection. But would something to do with the custody and access rights of grandparents be possible under section 20, in your view, if that section were still open?

The Chairman: I am not sure that the chairman should deal with hypothetical questions.

Mr R. F. Johnston: Can I move that we reopen section 20 for purposes of further amendments? Then we can come back to that and deal with this matter at that time and ask for unanimous consent so that we do not close it off. I missed your ruling that we had completed it myself, as you may recall. I raised that at that time.

But perhaps it would be a way of getting this debate into a more

appropriate fashion, because I think the danger is, frankly, from a procedural perspective, from the government's perspective on this, that it was section 21, not that it was part of section 20, subsection something-or-other. Perhaps that is a more appropriate place to have the debate, because the debate is going to be held here.

Mr Carrothers: Has it not already been held?

Mr R. F. Johnston: Heavens, no.

Mrs Cunningham: We have not heard your view.

Mr R. F. Johnston: Or mine. I am asking for unanimous consent that we reopen section 1 of the bill; not that we necessarily deal with it now, but that we leave it open at this stage.

The Chairman: Mr Johnston has requested that we allow section 1 of the bill to be reopened to permit further amendments than those which have been dealt with. Is there unanimous consent to do so?

Agreed to.

Mr R. F. Johnston: Might I suggest that we move on to the next section?

The Chairman: Whether amendments placed are in order will be up to the chairman to rule, based on the substance of the amendments. It is not on the basis of whether it is in the proper section.

Mr R. F. Johnston: Exactly. I would suggest as well that we move on and allow the potential motion to be developed and then come back to it, if that can be found to be appropriate.

The Chairman: Is there agreement to move on to section 2 and subsequent sections and come back to this amendment at a later time, to give time for it to be drafted?

Agreed to.

The Chairman: Are there amendments to or discussion on section 2 of the bill?

Mr Cousens: I have an amendment that I am sure you will have very great difficulty in removing by saying it is not part of the bill.

The Chairman: I am not seeking to remove things for the sake of removing them.

Mr Cousens moves that subsection 24(2) of the act, as set out in subsection 2(2) of the bill, be amended by adding thereto the following clause:

"(aa) The importance of maintaining emotional ties between the child and his or her grandparents."

Mr Cousens: Now, I would like to talk to it, if it is received.

The Chairman: Proceed.

1740

Mr Cousens: It has to do with this whole first amendment which this committee has ruled as being out of order. I would have to say in the first instance that we will come back to it and find a way in which we can cause this committee to consider very seriously the rights of grandparents.

I have to say that the comments made by my friend the parliamentary assistant to the Attorney General really failed to understand how people interpret the law. What he is saying, and said very clearly in a previous motion we had before this committee which has since been ruled out of order, is that grandparents are given standing by virtue of the bill. The fact is that he said they are not denied standing.

There is a very important role for grandparents in this society. I think our committee has a chance to recognize their involvement and their being part of the larger family unit. The fact is that it is important. We are dealing with a society that is changing rapidly and if there is any way in which we can maintain the links to grandparents, I think we should be doing it.

Part of the tragedy is that we are in such a fast-moving age that we just are not aware of what is happening in many of those homes where there are no longer those ties. I would like to acknowledge them as being something that is important. I look at the people who live apart from their larger family. They are in senior citizens' homes or living by themselves. They live for their families; they live for their grandchildren. There is such a real sense of them being part of their lives and part of their whole existence. For them even not to realize that within the law there is no recognition of that, I say we are missing something.

All I am pleading for is that there be that acknowledgement within the law. There are not that many grandparents who are going to read the law anyway, but at least they will have a sense of knowing. When they read Today's Seniors, they are going to at least know that we who sit here at Queen's Park recognize what they can contribute and what we want them to contribute to society.

Society is not just going to float along with this cut flower generation that is doing its own thing without having those links to the past. Let it be in the traditions, in our seniors, in our parents and grandparents and in the larger family. All I am trying to do is see that as a potential possibility, where we encourage, maintain and support it and acknowledge it here in this bill.

I see the emotional ties between the child and his or her grandparents as something that is very important. I want to put it in perspective as well that it is not more important than the parents, although in some cases it might be. In some cases, where both parents have been killed or something has happened, it could well pass on that the grandparents of this family begin to play a larger role.

In all, it depends on the will and on many other things. I am just saying let's not lose sight of what we have a chance of doing here now and that is, just simple recognition. It is going to make it easier for you to accept the other amendment, when I can find a place to fit it in.

Mr Offer: If I just might back up and first talk about what the intent is of section 2 of the bill, there are basically two issues that are to be addressed in this particular section.



The first is founded in clause 24(2)(d), which adds a new consideration in the determination as to what is in the child's best interests. It talks about "the ability of each person seeking custody or access to act as a parent." That is a new addition to the existing legislation.

The second aspect of this particular section is founded in subsection 24(3) which reads, "In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household."

What we are doing is stating that the presence of violence in the home will now be tied to a person's ability to parent. That is where the changes in terms of this section are founded.

If I might just move to Mr Cousens's argument in terms of his amendment to the section, again—and I do not know if I should reiterate what I said earlier—we believe that this particular amendment is unnecessary. It is unnecessary because it is already within the legislation. It is in the legislation because of the fact that under subsection 24(2) of the bill it talks about "the love, affection and emotional ties between the child and each person seeking custody or access." The phrase "each person" is not confined to mother or father but can be extended and has been extended to grandparents, and in fact aunts, uncles and what not.

For that reason, the amendment proposed by Mr Cousens is unnecessary, because the right that is hoped to be provided by Mr Cousens is founded right now within the legislation. As such, we will not support this particular amendment to something which is already found in the legislation.

Mr R. F. Johnston: We will be supporting the amendment as proposed, for a number of reasons and with some caveats I would like to raise.

I think we have heard a fair amount of argument from grandparents about the importance of specific and special recognition of their role in the family. This is a way of adding to, without in any way derogating from the principles that are involved in subclause 24(2)(a)(i), which is to say "each person seeking custody or access."

It is an ancillary argument recognizing the special relationship of children and their grandparents, and I think that is an important thing to do, but I am a little worried that it is being done, if I might say so, without regard to other matters, either in terms of a hierarchy of rights or in terms of why we want to afford these rights.

I would just like to raise this with the mover. It has been my difficulty with the motions as they have been brought forward. There is a presumption here that there is a hierarchy of rights now. We have a specific recognition under section 20 of the equal right of parents to custody, with no recognition of other groups. Underneath that, we have presently said that anybody who wishes to apply in this connection is able to do so and then the court shall make the judgement as to the appropriateness of that person's application for access.

With what you are doing here, we are saying that grandparents need special recognition. As I am saying, I am supporting that, but it begs a number of questions. If you are going to have that recognition of grandparents, then what about other members of the immediate family? What about the sister, the aunt, etc, who might also want that access?

One can imagine a sibling, for instance, who has gained the age of majority who might wish that kind of access. One can imagine an aunt or an uncle who has been very close to the child who would also want to have that access. Why do they not have some recognition there?

I am reminded, as I think of this, of arguments raised by a number of women's groups, here and over the years, which have argued that in the principle of custody, in fact in the first determination—not with what we are dealing with here, but at the separation agreement level or the divorce side of things—the onus on the courts should be to recognize who has done the most parenting in the past. That liaison with the child and responsibility for the child should be recognized as part of how the court makes its determination.

1750

It has struck me that as we look at the question of the hierarchy of access rights, if I might put it that way, we are now establishing here, it is very important to think about that concept. For instance, I can well imagine the case where the grandparents in the particular relationship may not have been close at all to the family. Yet here we recognize the importance of maintaining emotional ties with grandparents. On the other hand, the child may have spent every weekend with an aunt who developed a really close relationship and yet there is no recognition of that within what we are doing.

If you do not come up with your subsequent amendments, and since we are not moving any for the reasons I have indicated, there is a danger that what you recognize here is an a priori support for the grandparent, whereas the logical person who should be getting the judge's attention in all of this should be an aunt who is really close or whatever.

What I am saying is we are supporting the notion of development of a hierarchy, but we also believe that if you are going to move in that direction, it is incumbent upon you to move other motions that are supportive of the rationale for that hierarchy of familial connection.

Mr Cousens: I would like to comment.

The Chairman: I will add you to the list.

Mrs O'Neill: Legislation that deals with relationships is always difficult if not next to impossible.

I find this is an amendment that builds in what I consider somewhat false hopes and, as Mr Johnston has said, some kind of establishment of a hierarchy which may or may not always be helpful. Unfortunately, I speak from personal experience within my own family. If this particular clause had been placed with one wing of our family, it would have meant moving children out of province and away from all of their supports, their cousins, their friends and the rest of the family.

That is just one personal example, but I do feel that the bill as it stands now does place an onus on the person to have the relationship judged, which as I say is very difficult, but "person" does include grandparents. Certainly persons involved in the child's care and upbringing would sometimes, not always, but many times involve grandparents.

So I add another caveat, though I know it is well-intentioned. Very fortunately, within my own family the grandparents have given extremely strong

support to my own three immediate children, but just a little beyond that immediate nuclear family there was a very great difficulty that could have arisen.

I ask you to consider those kinds of possibilities. The act itself does include grandparents. As our parliamentary assistant has stated, no one who came before us stated that they did not have rights before the courts. Let us remember that this act is still going to be subject to the implementation of court judgements or the enforcement of court judgements. It has nothing to do with extending those judgements or changing them.

Mr Carrothers: I want to add some comments to what Mrs O'Neill has just said. Maybe I could add them from the perspective of someone who has had a professional involvement with our adversarial system, knows how it works and knows how it can twist things as it works through.

Mr Ballinger: Oh no, not another lawyer.

Mr Carrothers: Sorry. I will confess at the beginning that I am a lawyer.

As Mrs O'Neill has indicated, legislation dealing with these types of family arrangements is very difficult, if not impossible really, to put down. You need the wisdom of Solomon.

There is really nothing stopping anyone, if you look at the present section 21 which is just reincorporated in this bill. Section 1a is very broad indeed and incorporates anybody who has been at all involved with those children. They are brought into the process because, as Mr Johnston has indicated, the whole purpose of this law is for the interests of the child.

Given that the right is already there, I have some problem with restating something because I know there is a process that always goes on. There are words that get stuck into legislation. Even if they are well-meaning and tend to restate something already there, the process of interpretation always seeks to find a meaning for something. I will confess to having used such glitches in legislation to my clients' advantage in the past, so I am concerned about adding words into a section like 1a which is already there and already well understood, starting another round of "What does this mean? Who do we have to talk to? How do we talk to them?" when in fact there is nothing preventing the grandparents from being considered when they are involved with the children.

I am certainly one who is concerned with our nuclear family and the fact that we seem to have forgotten the values of multigenerational families, but I do not think this, well-intentioned as it is, it is going to add anything. I am concerned about the false hopes Mrs O'Neill mentioned and I am also concerned about the fact that it is going to add confusion into reinterpreting what clause 24(2)(a) means when the ability to deal with the grandparents is already there. For that reason, I really cannot see myself supporting this amendment, even though I understand where it has come from and I am very supportive of the principle. I think it is already there and I do not think restating it adds anything. It may create confusion and it may create results that we do not intend.

The Chairman: Mr Cousens, I have you next, but I am wondering if we could take Mrs Cunningham and then you could sum up and close off the discussion.



Mrs Cunningham: I have a question to whoever wants to respond to it. In subsection 35(1) of the act, "Where an order has been made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access"—I could have picked another section; this one happens to be the one that was in front of me; I did not have to turn the page—"by a person, a children's aid society or other body," could I ask what the legal opinion is underlying the specifying of a children's aid society there?

The Chairman: Is this pertinent to the amendment before us?

Mrs Cunningham: Yes, it is. It is an example of where, in this case, a special body has been singled out as being more important than anybody else. I am just asking why? That is all.

The Chairman: To whom are you directing the question?

Mrs Cunningham: To whoever wants to answer it.

The Chairman: Do you wish to answer the question, Mr Offer?

Mr Offer: Certainly, I can respond. The particular section is just somewhat of a direction, not a mandatory direction but some sort of an indication to the court of the types of facilities it might want to look at. But I specifically draw your attention to the last three words of that section, which say "or other body." It is not exclusive at all; it is just a matter of information.

Mrs Cunningham: It is giving an example of a type of facility. I think it is probably because quite often that would be the very body to which we would refer. Is that correct or not?

Mr Offer: Certainly, in terms of the information given in this section, I think to say that is the body that would be used in the main is a quantum leap. I think it is just a matter of information which is given to the court and it is up to the court to determine what facility it wishes. It is not to say that it is the children's aid society which ought to be looked at first; it is just giving some information, some indication, as well as saying "or other body." It is all that it is there and all that it is designed to do.

Mrs Cunningham: I do not mind the arguments against Mr Cousens's motions, but when we are saying there is no need to specify because somebody is not special, there is not a special reason for it, it is not done anywhere else and this is where we get into problems, when we start delineating out individuals or special bodies, that is fine, then within the same act we have the children's aid society because, quite frankly, it is special. When the judges are looking for someone to be the official guardian or in order to supervise the access, the children's aid societies are looked upon in the courts more regularly than another body.

If you have something to add, I would be happy to hear it, because I like to be correct. If I am not correct, I would like to be corrected on that. It seems to me that the children's aid society is special in the courts, and where the judges are looking for support of families, that would be the agency looked upon more than others. They in fact have a special mandate.

Mr Offer: To respond, the context in which you are discussing these two sections is somewhat removed. In terms of the amendment—and I believe that is what you are talking about, Mr Cousens's amendment—I think it has been ably stated by both Mrs O'Neill and Mr Carrothers that what we are talking about, however well-intentioned it is, is something that is already found in the legislation. No matter what one wishes to say or how one wishes to say it, the fact of the matter is that in the current legislation and in the bill, which in some other ways amends the legislation, that shall continue.

"Each person" is not limited to father or mother. It is anyone who is entitled to custody and/or access, and that includes the grandparents as well as many other persons. In fact, during our consultation, when we heard some very good presentations by grandparents and people representing grandparents' associations, the issue was never that they did not have standing; the issue was something else. They always had the right to go to court to make their cases for custody and/or access.

Mr Cousens's amendment is trying to give a right to grandparents when they already have that right. That is why—

Mrs Cunningham: I am sorry; no way.

The Chairman: Order.

Mr Offer: —we are against the amendment, because what it seeks to do is provide something which is in fact already founded in the legislation.

Mrs Cunningham: The reason I raised this as an example is that you said that the children's aid society, in your opinion, is a type of facility. It was named not for any special reason and it is not necessary to name. I am just pointing out that is an argument that can be used either way. In this particular clause—and I could point to others in the act—a special body has been named. We said "access by a person," which is global, "a children's aid society," which is special, "or other body," which again is global. It is exactly the same argument that Mr Cousens is using and could be using.

The truth of the matter is that the government or other members do not think it is important enough to put it in. That is fine. I will take it that other members or the government, individuals, do not think it is important enough. That is not a derogatory remark on my part. But do not say it does not happen that special groups are not referred to, because in this very act a children's aid society does not have to be mentioned for any special reason. I tried to say it should. You shook your head and said no. You used the words, "It is a type of facility; it happens to be named."

Now you are talking about well-intentioned. It is more than well-intentioned. Just as the children's aid society is special and that is why it was drafted in the original bill and why it is there, so are grandparents special. You cannot just say the global word includes them any more than the global "or other body" includes the children's aid society. The argument does not hold. The fact of the matter is that it may make it more difficult for the judge if you have a special family member. I think Mrs O'Neill gave a good example. She is afraid that maybe judges will not use their discretion or maybe weight it in a certain direction. That is her opinion and she has a right to it; but do not say it does not happen that we specifically name a family member any more than we specifically name a special agency, because we have done it, and for no other reason than that we have done it.

That is my argument in responding to Mr Cousens. You either think the judge can use his good sense and that grandparents are special in the lineage, and they have been and always will be, and there is nothing wrong with putting them in. It just gives a bit more clout to that family member. A judge in his good sense will say they are not going to have access, or hopefully they are.

This is the problem with writing laws. The more you put in them, where do you draw the line? We do not even need it. I said that before, but I did not like the arguments that were being presented. That is all.

The Chairman: It does appear we are not yet to the point where we can take the vote on this amendment. I have an indication that Mr. Johnston wishes to speak, Mr Offer wishes some further comments and Mr Cousens wishes to close the discussion, and Mrs O'Neill.

Mr R. F. Johnston: I agree, but I wonder if, at this point, because we do not have Miss Swift here on a regular basis at this stage, I wanted some recognition of the incredible work she did for us, even since the public hearings, in terms of amassing a large amount of documentation, much of it for me, by my request. I appreciate both the quantity and the quality of the work that has been done. It has been very, very helpful.

The Chairman: We will take those comments as being stated on behalf of the chair and the whole committee. Thank you very much for the work you have done.

The committee is adjourned until Thursday, following the routine proceedings of the House.

The committee adjourned at 1806.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
THURSDAY, 25 MAY 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cousens, W. Donald (Markham PC) for Mrs Cunningham

Offer, Steven (Mississauga North L) for Mr Beer

Clerk: Decker, Todd

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Witness:

From the Ministry of the Attorney General:

Cochrane, Michael, Counsel, Policy Development Division



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, 25 May 1989

The committee met at 1538 in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Section 2:

The Chairman: When we adjourned on Tuesday we were discussing an amendment which had been moved by Mr Cousens, an amendment to subsection 2(2), adding the following clause (aa), "the importance of maintaining emotional ties between the child and his or her grandparents."

We had had a number of speakers and left on my list of speakers were Mr Johnston, Mr Offer, Mrs O'Neill and Mr Cousens, to finish up.

Mr R. F. Johnston: I have lost the train of exactly where we were at the moment. I do not think it adds a hell of a lot to reiterate the views I have put forward, but I did indicate that we would be supporting the amendment in terms of putting in a specific reference to grandparents and their connections with the child.

I had asked some questions previously of Mr Cousens about what I saw as some difficulties around bringing in a hierarchy of rights and wondered, if this were to pass, whether or not there would be subsequent amendments which would reflect a rationale for making decisions. At the moment it is open-ended for a judge to be able to determine who should have access, and one could say that that gives him a free field to make the decision.

Others might say that it also allows a person to be prejudiced against certain groups, and I am certain that some of the grandparents who have come before the standing committee on social development would feel that they were not given major recognition by the courts and the cases in which they were involved.

I am concerned that principles around blood lines be fairly clear if we are going to develop a hierarchy that will be a more specific guide to judges. If we are going to say that the grandparent gets a special section, then what do we do with the two matters I was raising before, the primary notion of whether it should be just a priority right or whether it should have something to do with the connection of the grandparent to the child prior to the custody decision?

In other words, should there be a difference of opinion for a judge and an ability to make a decision, depending on whether or not the grandparents had been involved with the child before? For instance, should the rights of the grandparent who was not very much involved, for whatever reasons, be equal to or greater than those of an aunt who might have spent two to three months perhaps raising the child during the period of splitting up or whatever?

How do we deal with those kinds of matters and how does the judge deal

with those matters? At the moment he can weigh everything and has a right to weigh things equally. If we put in a section which specifies grandparents as having rights and not specifying the rights of others who are alluded to in the bill, does that restrict the ability of a judge to recognize a special relationship with another sibling or an aunt or an uncle? What I want to hear in Mr Cousens's summation is his response to those kinds of concerns.

The Chairman: I am sure he is making notes for his concluding comments.

Mr Offer: In terms of the rights that are now available to grandparents as other persons now contained within the particular legislation, I think I made our position in terms of a rejection of this amendment clear in the last meeting; that the hearings that we had on this bill and the representations made by grandparents and their associations are well done, well presented and clearly showed that they did have the right to appear before court; that in fact there was not a single incident that the law does not support where grandparents did not have a right to go before a court to ask for custody and/or access. Our difficulty with this particular subsection is that it does create a hierarchy and it is something that we are not prepared to accept on that basis.

Mrs O'Neill: I will withdraw from questioning.

Mr Cousens: I appreciate the comments that have been made by Mr Johnston. I think that he has expressed a sensitivity that is part of the thinking behind this motion and I thank him for raising some of the considerations that fall into it.

Let me just start with the principle that I began with, which originates from the feeling of grandparents who feel, rightly or wrongly—I do not think it is always correct, because I think the parliamentary assistant is correct that the law does give consideration to all people within the context of the law in a status that recognizes their special ties, emotional and otherwise, and relationships.

Therefore, when you are looking at how a grandparent is going to be considered under this act, it really brings into question some of the personal needs that grandparents have. I have a sense, through my conversations with them, by virtue of the absence of any reference to grandparents within the act, that they therefore have in their own minds, though not necessarily in the minds of the courts and the system, that—I think you are right. I personally do not have a situation in which there has been a blatant, outward bias against grandparents. If I had that, it would make me all the more excited about what I am talking about, because I happen to know that it will not be much longer that I will be able to say that. I am a parent now. Something will happen along the way with my kids, and I hope it does.

I also respect the fact that there are many who are grandparents and feel that they have a kinship with those grandchildren. It goes back to the relationship they had with their own children, first, and now the continuing relationship. By virtue of the absence of any reference to them within this bill and by virtue of the concern that many of them have talked about, it has increased their sense of worry.

I think we are living in an age, quite frankly, where we should be doing everything we possibly can to strengthen family ties. Certainly within this law, it is our desire to make sure that those ties, especially when you have a

custody problem coming up, can be fully recognized. We are dealing with it more and more as our society is changing, yet we are afraid—at least, the government seems to be afraid—to give any special reference to a grandparent clause in any way.

I know that grandparents feel badly enough that they have distance between them and their children now, and it is part of our way of life. They do not live in the same home any more, and that is part of our way of life. Therefore, when there is a family breakup and a custody situation develops, there is not even a reference to them.

Unfortunately, the grandparents on the side that does not have custody most often are the ones who feel most aggrieved, because they have no comeback. They do have a comeback. I think the parliamentary assistant is fair in saying that the law allows for it, but if there was some kind of way they would at least know the judge was going to consider them as part of the greater family, if necessary, as part of section 2, as is described—section 2 gives a tremendous amount of opportunity for the court to consider just who is going to be considered.

I am not going to take the time of the committee to go through it, but what I have really tried to do in presenting this amendment is just to add another small clause that says the grandparents are part of it.

Therefore, in response in part to what you are saying, Mr. Johnston, I am not trying to give them an undue weight in comparison to other considerations that the court may have to make at the disposition of an individual case. It could well be a sibling; it could well be an aunt; it could well be another person, and though the grandparents are part of the greater context, it may not necessarily weight the court's decision in their favour because of all the other considerations that deal with the emotional wellbeing of the child, as we talk about the new family context.

I see it as a way of satisfying a perceived need as much as any, as a need that is in the minds of many people who are saying, "I do not have too many rights as a grandparent." I happen to have the greatest respect for this political system, because every one of us who is elected spends time with seniors, in one way or another, in his riding. We see them in senior citizens' homes. They have families, and some of those families have lost contact with them. They are someone's parent and someone's grandparent, yet they feel somehow that society has cut them off and they are no longer a part of that society.

One of the reasons for my motion, and I think Mr Johnston twigged on to it in part in some of his concern in speaking to it, is that there has to be a greater sense of community that goes into what we are making as the law. If in fact we are able to help that person, that one grandparent who then at least knows that he is part and parcel of a greater process, I will think I have done something and we have done something that recognizes it.

1550

I see the law continuing to have the right to say, "Look, you may want it, grandparent, but no, in light of all the considerations we have here, your options are going to be these because that's in the best interests of the child." The child's interest is the primary interest that this bill is really trying to protect, defend and promote, but notwithstanding that, I think there is the other interest of the grandparents. Not to include the grandparents is



to put them into a category where they not named, where they do not have that value in the eyes of the law. They have value, they have so much to offer. If in fact we can somehow just have that sense in what we are doing, I think it would mean something.

I wish I had had time to talk to Mavis Wilson, the Minister without Portfolio responsible for senior citizens' affairs. Here you have a government that is trying, that at least is putting lots of words out that talk about seniors and how they can play a role in society. I happen to believe that our society is weakened when it does not take into consideration the place, position, posture and potential that can be offered by seniors participating, especially as you start taking it down through the generations. If, through this very simple amendment, we can give that kind of credibility, that kind of understanding, then I feel we will have done something that says the right thing for them.

I hope in answering that question that I am not trying to open up a hierarchy. That would create problems. I think that you still have to look at each situation in its own unique way, where you have a lot of conflicting situations coming together, and then the judge or mediator has to work that through in the best way possible for the child. To impose a certain other set of divisions at this point is not really where I am coming from. Having said that, I note that the parliamentary assistant's shirt has turned a different colour. Maybe it was that colour when we started.

Are you going to support it now, Mr Offer? Do you think you are going to be able to come along and be on side with this amendment?

Mr Offer: The question has been posed to me. I think that my position has been made clear. I understand where you are coming from and the good intentions of your comments. It is still our position that the rights of grandparents are now found within the act, as you have already indicated, and that this type of amendment would create a hierarchy of rights, even if you do not wish to intend it. I think there is no question that it would. As such, that is why we are against the amendment.

The Chairman: Are you ready for the question? All those in favour of Mr Cousens's amendment? Opposed?

Motion negatived.

The Chairman: Members of the committee, we should be proceeding clause by clause through the bill. We did agree on Tuesday that we would permit further amendments to section 1, even though we have just taken an amendment to section 2. Are the members ready with those amendments, and should we deal with those now?

Mr Cousens: I have worked overtime.

The Chairman: So you are ready to proceed with further amendments to section 1?

Mr Cousens: Yes, if possible.

Section 1:

The Chairman: Mr Cousens moves that section 1 of the bill be amended by adding the following subsection:

"(2) Section 20 of the said act is further amended by adding the following subsection:

"Grandparents

"(8) Section 21 applies to a child's grandparent as well as to his or her parent and to any other person."

The Chairman: I hear your amendment. I am just seeking some advice to ensure it is in order before I allow it to be—

On just a quick reading, it appears to me that it is an amendment to section 20 which makes reference to section 21.

Mr R. F. Johnston: Yes.

The Chairman: I would rule the amendment out of order on the basis that the amendment, while appearing to be an amendment to section 20, which is before us, is in effect an indirect amendment to section 21, which is not before us.

Mr Cousens: Mr Chairman, I challenge the chair. I believe that what the government is really trying to do is, using any excuse at all, to keep from getting this bill modified, changed, to include some of the potential ways of improving it. I certainly have the desire to do that in the best interests of the people I represent.

The Chairman: We have heard your reasons for the challenge to the chair. There is no debate on it. Those who uphold the decision of the chair please indicate this. Those who do not uphold? The amendment is out of order. Did you have another amendment to section 1?

Mr Cousens: No, not to section 1. I have a list of other amendments.

Mr Daigeler: I do think, in fairness to you, Mr Chairman, it should be pointed out, however, because your integrity has been questioned for this. You have been, as it were, identified as taking the government position, and I think it should be pointed out that any chairman of any committee is in a neutral position. I wish to commend to you that you follow that line.

Mr R. F. Johnston: Said the government member.

The Chairman: Thank you, Mr Daigeler.

Mr Cousens: Shall we get into that one, now that we have started—

The Chairman: I did make the decision following consultation with the clerk, not with the government.

Mr R. F. Johnston: Not with that other fellow.

The Chairman: Not with this guy.

Mr R. F. Johnston: Certainly not, even if that was his point of view.

The Chairman: Any further discussion on section 1? Shall section 1 carry? All those in favour? Opposed? Carried.

Mr R. F. Johnston: I would like that recorded.

The Chairman: You would like a recorded vote?

Mr R. F. Johnston: A recorded vote on that, please.

The Chairman: On section 1?

Mr R. F. Johnston: Yes, on subsection 1(4a).

The Chairman: A recorded vote has been requested. Please call the roll.

Mr Cousens: Have we not already voted on this?

The Chairman: You can call for it as you take it.

Mr Carrothers: I thought we had already—

Mr R. F. Johnston: No, we left it open. We reopened it so he could move his amendment, which turned out to be out of order.

Mr Chairman: We reopened it yesterday.

Mr Carrothers: I thought we had gone through this yesterday, that is all.

1600

Mr R. F. Johnston: No, the recorded vote the other day was on the amendment that had once been proposed by the member for Eglinton (Ms Poole) and then was reintroduced, as you may recall, by the member for Markham (Mr Cousens), not on this. I would like a recorded vote on this particular principle, which underpins this bill.

The committee divided on subsection 1(4a), which was agreed to on the following vote:

Ayes

Carrothers, Daigeler, Offer, O'Neill, Owen.

Nays

Cousens, Johnston, R. F.

Ayes 5; nays 2.

Section 1 agreed to.

Section 2:

The Chairman: Are there any amendments to subsection 2(1)? Mr Offer, do you wish to make general comments with respect to section 2?

Mr Offer: No, I think I have already made my comments with respect to this.

The Chairman: Then we will take subsection 2(1). Shall subsection

2(1) carry? Carried.

We have had an amendment to subsection 2(2), and the amendment was lost. Is there any further discussion or amendment to subsection 2(2)?

Mr R. F. Johnston: I just want to be clear about what we are dealing with here. We are dealing with the subsection in large type.

The Chairman: The heavy type, and everything that follows until where it says "3."

Mr R. F. Johnston: No, I would like all of that done individually, if we might.

The Chairman: Where it says "are repealed and the following substituted therefor" and then another "(2)," you want each of these clauses dealt with independently.

Mr R. F. Johnston: Exactly. I would like some discussion on some of these matters. We might as well do them individually as we go through.

The Chairman: Okay, clause 2(a).

Mr Carrothers: Just for my own edification, since most of these sections are already in the existing legislation, if we are going to discuss them individually, would we focus just on the ones that are changing here then? Is that normal procedure?

Mr R. F. Johnston: No, I will deal with what is before me on the printed page.

Mr Carrothers: Even though it is in the existing act.

Mr R. F. Johnston: I will raise that whole matter, yes.

Mr Carrothers: All right, just for my own edification. I like to learn something every day.

Mr R. F. Johnston: One of the principles that I am sure Mr Carrothers is familiar with, even though he has not been sitting on this committee as long as I have, is that there are two ways of dealing with amendments. You can either agree to change things or delete things or you can leave things the same. Usually, you are making a decision about why you have left something the same, the same way that you have made a decision about why you have changed something. I question why some of the things that are in the old act have not been changed, whereas the government has chosen to change other things, so that is why it is totally in order and appropriate for me to do that.

The Chairman: The chair is not in any way attempting to restrict discussion.

Mr R. F. Johnston: I know that.

The Chairman: What I am suggesting is that we deal with all of subsection 2(2) and allow any discussion or amendments on any of those clauses, and then take the vote on all of subsection 2(2). Is there any discussion on any point on clauses (a) through (h)?



Mr Cousens: You are doing it subsection 2 and then you have clause (a) and then you have the subclauses to it. That is really all that Mr Johnston has asked for. I think you will find that you will expedite carriage of these sections by acquiescence.

The Chairman: I was suggesting a way of proceeding. The clerk tells me that if you insist that we vote on each subclause separately, we will do that.

Mr Cousens: That is what he asked for. I do not see any reason why the chair could not—

The Chairman: I was just trying to be helpful. I indicated flexibility, allowing full discussion on any point in there. But let's proceed then. On clause 24(2)(a), is there any discussion? Shall 2(a) carry? Carried.

Clause 24(2)(b), at the top of page 2, any discussion?

Mr R. F. Johnston: Yes, please. The reason I wanted to have some discussion about this particular section is not because there is a one-word change from "where" to "if." I want to be clear about that, because we have used the word "if" in other legislation when it comes to best interests subsequent to the Children's Law Reform Act, and that is not the matter which I want to raise.

I thought it would be an appropriate time to discuss the question of children's rights within this legislation and the government's judgement as to why it has done as little as it has around children's rights in this proposed amendment to the Children's Law Reform Act.

I reminded members, I think while we were having our hearings, of the fact that this particular law that we are amending now predates major changes that were made to children's legislation in the province, specifically under the Child and Family Services Act, when the question of children's rights on a number of matters, from incarceration, a child in need of protection, adoption, to a child in a long-term residential care unit were finally changed. There was a massive overhaul of that existing child welfare legislation and a real change in emphasis around the rights of children and the language in legislation around those rights.

What we have under the present Children's Law Reform Act is a very old-style approach to children's rights, with some very passive language available under the existing legislation to suggest that a child has some rights to a say around access and custody questions, that there is some possibility of a child being able to access the official guardian's office, for example, but there is no very definitive language which spells out time and again throughout the legislation that this is children's legislation, this is about the best interests of children and that what we have expected in other legislation is that one of the presumptions of ascertaining best interests these days is to ask the child what he or she wants and to have the child have some major say in this and not just some passive kind of role.

What I am disappointed in is that the government has chosen to do so little, when under the Child and Family Services Act it has some excellent models of language that could have been used. We did not believe, for instance, that section 20, which we have just been talking about, warranted any major amendment itself to talk about children's rights under that section. It talks about a lot of other people's concerns around access and custody, but

it does not say anything in it about what a child should have as a presumption, and that is a founding piece in this present legislation, for this corollary section 24.

I was really disappointed with the results of Ms Swift's research efforts around the official guardian's office, for instance, to discover just how much the official guardian's office is being used under the passive legislation that we have presently around these questions of access and custody. As you may recall, if you have read her report, it indicated that the official guardian's office was not able to break out which cases even dealt with access or custody, something which I found highly improbable. It raises an awful lot of questions in my mind about the keeping of statistics in the official guardian's office. It goes back again to some of the problems that have been identified by witnesses before us about the lack of statistical information upon which this change in law is premised.

I wanted to raise under this section, because it is the first one that actually deals with a child's views and preferences, why it is that the government did not move to some of the other kinds of models that we can look to and which, again, Ms Swift has nicely pulled together for us out of the Child and Family Services Act.

Whereas it can be argued that there are no direct parallels between the rights of a child who has been put into long-term residential care, say, if he has a psychiatric problem, or the rights of a child who has been incarcerated under the Young Offender's Act to this kind of legislation, there are some definite parallels. In fact, there are some specific connections between definitions of a child in need of protection in this legislation and a child's rights under adoption and the question of custody and access. Surely, these are things which are linked in some cases and definitely have other kinds of connection and parallel.

I want to remind members of some of the rights that are there under the existing law that we have in Ontario for a child in terms of adoption. Let's be clear about this. Adoption sometimes is the end result of family breakup and the end result of major, continual problems around custody and access. It is not unusual that those kinds of problems might have gone before an adoption of an older child.

If you look at the rights under adoption—I just commend those sections of Ms Swift's commentary to you. A child of seven years of age must be spoken to and has rights to say no to an adoptive parent. I think this is on pages 9 and 10 of her report. "An order for adoption of a person who is seven years of age or older shall not be made without the person's written consent," that is, without the child's written consent.

1610

I ask you, then, to look at the existing legislation we have before us under the Children's Law Reform Act and what the government has brought forward here as the necessary reforms to that act at this stage, and say: Where is the parallel in the legislation to recognize the role of the child in all of this? And why is that we are not trying to get consistency of language, as we tried in the Child and Family Services Act, about the rights of children in a number of situations where their rights are in question?

Again, under adoption, the child shall not make that consent unless he "has had an opportunity to obtain counselling and independent legal advice." I

ask you to look at the language either here or in the existing legislation and ask you where the parallel is to that, in terms of reinforcing the child's role in all of this. It does not exist.

Instead, we have an appendage, one of a series of matters under section 24, which deal with a number of things to do with best interests. But there is nothing in here that basically says in language easy to understand that children are the focus of this law and the rights of the child to be able to say, "I want to be with my granny," or "I want to be with my mom," or "I don't want my dad around," or "I do want my dad around." There is nothing in here which really reinforces them triggering the system. There is nothing in here which really says that if a child does not like what is happening in terms of the access orders not being complied with, as an example, the child can take an action in this circumstance.

There is nothing to say here that we are dealing with this in any coherent way with other legislation that exists in Ontario. If you look at the rights of a child in need of protection under the Child and Family Services Act, the same kinds of things are available to them in terms of rights to legal representation; to written information about themselves, unless a judge determines that it would be harmful to the child. The presumptions are all that the information will flow and must flow unless it is considered to be harmful.

If you look at this legislation we have before us as existing legislation or the amendments that are before us, you do not see any kind of thrust like that. That is one of the major flaws in what has been brought before us. We are getting a 1960s approach to legislative reform here and not a 1980s or 1990s approach. The kind of presumptions about the role of a child in society that are inherent to the notions in this bill presented by the government, Bill 124, are antiquated views of a child's role in this sort of thing.

I raised these concerns during the public hearings section of this, and I am wondering why it is that the government still feels that all that is needed to make this bill suitable is this maintenance of clause 24(2)(b), except that we changed the word "where" to "if," to make that at least consistent with the Child and Family Services Act. But that is the only change that is here, and you have made no adjustments around children's rights since the hearings.

Mrs O'Neill: I certainly see the child's views and preferences being attended to in clause 24(2)(b), "if they can reasonably be ascertained." I do not know what kind of criteria the lawyer will use and it certainly does give some flexibility.

But I have also seen this with acquaintances of mine, that children in the age group between seven and 12—this family had three children—were asked to choose between the father and the mother. That was the judge's decision. It really destroyed the family for ever. If there had not been that choice made by the individual children—Unfortunately, in this case, each of the children chose the father; I think it was unfortunate, in any case, because the mother was never able to recover from that series of choices.

As I said the other day, when you have siblings or even an individual child, it is very difficult to choose at a moment of crisis in a family whom they want to spend the rest of their dependent years with. I hope and feel, because of the way in which this is written, that there is room for



counselling as Mr Johnston has mentioned. There is certainly room for legal advice on the part of the children. But again, to be too specific here could, in my opinion, be harmful rather than helpful.

I know of what Mr Johnston speaks. It is a different piece of legislation with a different goal from this one. You are talking about natural parents as opposed to adoptive parents or agencies. I find I have to trust, as one often does when placing legislation, that it will be well interpreted. The child's views and preferences, if they can be reasonably ascertained, can be used well and I hope they will be.

Mr R. F. Johnston: Perhaps I might respond because I think it is really important to understand that we are trying to get past the stage where we have contradictory style legislation in the province. We are trying to get some consistency of approach around rights. One of the reasons we spent two and a half years on that other bill and the important questions around access and custody that I think are out there, as compared with the time we are spending on this—in fact, public hearings were not even wanted initially on this whole process, as you may know—was that one of the things we tried to do was to get some standards by which judgements could be made.

Judges and lawyers were asking for that kind of assistance and saying, "You can't have these different kinds of views in coming before family courts." In one piece of legislation the judge takes the child into consideration this far, and in another case he only takes consideration this far.

I just want to point out some of the flaws here if I can. The presumption of this act is that if there is a breakdown in access and problems, the person who is complaining can undertake a proceeding with the court. There are a number of reasons why denial of access is appropriate and those are listed. But if you look at it, there is nothing there that requires notification to the child of what is taking place. There is nothing where the child is automatically provided with standing and a right to be represented.

In the case of a child in need of protection, separate from adoption, if you want to get away from the natural parents' versus the adoptive parents' rights in this, the child is independently represented, so that there is no presumption that the child's best interests are necessarily those of the parents involved. There is a separate kind of recognition of the child's rights and best interests being represented by a right to counsel, if he or she chooses it. There is nothing in here that says there is the same kind of presumption around access.

The argument can be made, if you want to trivialize this bill and take that kind of lineup, that this is really only for small, insignificant matters, etc., even though they have to go to a court to be dealt with. But if you want to take that course, then you can say it is not significant enough for the child to be involved automatically in the process.

I would argue that any of these changes may be hurtful or hard on the person who has been denied access, but they are often a lot harder on the child. The child needs to have his or her position or status in all of this reinforced in legislation and not left passive or tacit, or as one of a long list of things that must be considered but are not given any precedence or any of these other things, are not given any special status in terms of recognizing the child's role in this. That is what I find to be the flaw.



You might want to have nuances of difference between this and other legislation because of the different format, but there is no special recognition here of the child at all. If you look at the existing section under the present act, which allows them in on the initial custody decision, again I would question if that is as proactive a position for the child as we have under other legislation to do with matters that are just as serious to the child, but no more serious.

1620

Mr Offer: In responding to the matters brought up by Mr Johnston, I would like first to indicate what we are dealing with in terms of this particular legislation, Bill 124. What we are saying is that where there has been an order made in terms of custody and access, we are trying to make that order more enforceable than is presently the case, more enforceable in terms of not having the one alternative in terms of being able to go for a contempt of court proceeding and what that entails.

We are also, of course, putting forward a corollary in this legislation, that there is another duty on the part of the noncustodial parent to exercise access, because we believe that this is and will be in the best interests of the child.

The point you brought forward was looking at a particular subsection, subsection 24(2) of the amendment. I think it is important that we do not overlook what that whole section is about. That whole section, not only the one part you brought forward but the whole section, has as a single focus, a single design, a single objective: what is in the best interests of the child.

It gives a direction to the court and tells the court what are some of the elements that can be used in trying to ascertain what is in the best interests of the child. Granted, you have taken one particular subsection of that matter, which is ascertaining the wishes of the child, but I think one cannot refrain from also talking about the section as a whole. That whole section has as a focus, as a design, as its purpose and objective, determining what is in the best interests of the child in a very difficult matter, a custodial matter: an action for custody.

Though I have listened carefully to your concerns in dealing with, "Are we overlooking the child?" I read the section and I say that we are and have for quite some time been giving an overriding need and an overriding direction, which has been followed by the courts, to determine what is in the best interests of the child and to give to the court some direction as to what elements it should look at. I think this particular section does well to meet that focus, its particular objective. I understand what Mr Johnston is saying with respect to one subsection, but I think we have to look at the whole section and I think it does meet the purpose for which it was designed.

In terms of the bill, in terms of the amendments to this bill, we have brought forward that section because of two changes we are making. We are adding one more element in terms of ability to act as a parent, and we are bringing in a further element in terms of the whole question of violence and mandating the judge that this does determine the ability to act, a person's ability to act as a parent. So I think that we have strengthened, in many ways, the focus and objective of the section.

Mr R. F. Johnston: I will deal with those other matters, whether they are strengthened or weakened, as we go through them one by one. But the

reason I deal with clause 24(2)(b) here around children's rights is because it is the only section where you do anything about it.

Let's be clear about this. This bill does not deal only with sections that are to do with problems of access; this section 24, best interests, predates any problem with access. It goes back to the other fundamental parts of the initial bill, as does your initial amendment on subsection 20(4a), which I voted against, which again deals with the questions of access and custody in general and not with problems of access that may follow a determination about who should get access.

In that subsection 4a, which is not debatable at the moment, you did not make any changes in section 20 that would relate to strengthening the notion of the child's role. Instead, what you did was put in a presumption that having both parents involved was necessarily good for the child. It is fascinating that would be the emphasis rather than that the child's involvement and decision-making and being represented and involved in the process should be fundamental to determinations of access, etc., as we have done in other legislation.

The reason I am dealing with it here is that this is my opportunity to deal with it because nothing else has changed. You are dealing with a section that is the principle of the bill. There could have been a major children's rights section added either under section 20 or just prior to this if you had wanted to in order to clear that up.

I would like to come back again to the notion of a child in need of protection. If you think the phrase around "best interests" is sufficient, I ask you to go back to the section, part III on child protection, in the Child and Family Services Act, and you will see that there is one paragraph, 37(3)(9), that deals with the specific language we have in this subsection.

It mentions the best interests of the child, but it is followed immediately thereafter by section 38 which spells out, around child representation in those matters, that a child may have legal representation at any stage of the proceeding. If the child is not represented, the court must determine whether "legal representation is desirable to protect the child's interests." When the child's views are different from his or her parents' or the children's aid society's—even any of those groups—that child has a right to have that representation involved.

All I am saying is if that is good enough for a child in need of protection and we give the child that right and that separate entity and status in the court system, then I do not understand when you are dealing with the principles of the bill under subsection 4a, as an amendment to section 20, or under this section where you are determining best interests, why all you could do was change "where" to "if" in the section instead of making this legislation real children's legislation. It is not.

Mr Cousens: I was concerned during the public meetings, in which we had a number of people who came to our committee and made their presentations, that in fact the government had not really done any kind of analysis, statistically and otherwise, on violence as a problem and the issues that are being raised by subsection 24(3). Is there anything you have gathered since then? I am wondering if legal counsel—oh, Steve is going for a coffee—could give further statistical reasons on why they are doing this.

I do not think you had a chance during the public sessions to really explain this in any great detail. Is there anything you have to offer now since the presentations were made?

I have asked a question. I do not know whether Steve was listening.

The Chairman: You wish to pose a question to the parliamentary assistant on this point?

Mr Offer: I think I heard the question in terms of the statistical basis upon which these particular amendments are founded. During the public hearings, we were very clear that this is a matter that is very incapable of statistical analysis. It is very difficult to determine with any degree of certainty how many people are not exercising or being denied access because those things are just unknown by court officials and by any person who might be able to compile those.

But our position has always been, and I think in some of the hearings that took place, that it is a problem. I cannot give you a statistic. We have never ever indicated that we could. But we know from our information and from our experience that there is a problem out there. It is a problem that is capable of rectification. It is rectifiable by making these particular orders enforceable. It is that upon which these amendments are founded and we think that is going to provide a very important good and a benefit to all of those persons who are involved in a very difficult situation.

1630

Mr Cousens: Having asked the question and knowing the question was raised during the public presentations, I would like to just make the record show that we are surprised the government has not, even since those public presentations, apprised itself of some studies.

There were certain ones that were presented during the public presentations and there would have been opportunity for the parliamentary assistant and his staff of thousands to do a further analysis of it. It certainly is not forthcoming and I would have hoped it would have been provoked just a little bit more into that.

I put it on the table. I accept the fact that there is a human condition there that is not easily defined and analysed and categorized, and yet I have to venture to the honourable member that it has been done in California and some other states in the United States. Some of that information, though very remote from ourselves, certainly would have some bearing on the thinking you would have.

Let me just raise one other question. It has to do with an interpretation and I would like to ask you to answer if you can. On subsection 24(3), I will read the paragraph but I am going to ask you to think of the words "at any time" and then "violence."

The question I really want to ask is, can that be interpreted as something that could be used against a possible guardian? Have they gone back too far? Are they digging too far into the past? And what would the definition of "violence" be in that circumstance?

The Chairman: Your question and comments are out of order because,



having requested the chair to go subsection by subsection, you have moved considerably down the page.

Mr Cousens: I have jumped out of it.

The Chairman: We are on clause 2(2)(b) which is at the top of page 2.

Mr Cousens: I am sorry. I withdraw that.

The Chairman: I am sure you will remember to raise it again when we get to that part. Any further discussion on clause 2(2)(b)? Shall clause 2(2)(b) carry? Carried.

Clause 2(2)(c)?

Mr R. F. Johnston: This is another section that is totally unchanged from the existing legislation. As members will know—I do not raise this frivolously, for those members who think it is frivolous—there was a recent court judgement which unfortunately used as one of the factors in determining that a woman should not have custody of her child the fact that she lived in an unstable environment in a women's hostel. That was one of the factors used by the judge.

I look at this section, which basically says, "the length of time the child has lived in a stable home environment," and I say to myself, is this not something we should be qualifying in some kind of fashion to make sure that that kind of judgement or even using that as a list of items that a judge would enumerate would not occur again? I myself was stunned by the fact that a judge in 1988 would make such a ruling.

As you know, a number of groups spoke to us about this section and raised their concerns with it. I just wanted to remind members that there were a number of groups of people who said we should either delete this section entirely because of the difficulties of how it might be interpreted and the bias that might be involved in that, or we need to have some sort of recognition somewhere that a women's shelter is considered a stable environment, because that was the issue at hand.

The matter we are after there is surely, as somebody raised, not a matter of the length of time a child has lived in an environment, but that he was living in some place of physical safety and that his emotional wellbeing was being enhanced. Those, I think, are what is important to us here.

I ask again, why is it that after the public hearings process the government has decided this is fine to be left the way it is and not to be amended at this stage?

Mr Offer: The short answer is that it is one of a number of factors to be taken into consideration by a court in determining what is in the best interests of the child; it has been in the past, and we have seen no reason why it ought not to be in the future, in the discretion of the court.

Mr R. F. Johnston: I guess the difficulty I have is, the reason that we change laws is because society changes. Presumably, you are proposing to change the Children's Law Reform Act in order to meet the changing needs of people around redress around access.

We have had one very blatant use of this kind of section in the courts recently and yet, what we are trying to get at, I think, is not some



quantifiable length of time: that nine months would be better than six months or whatever, and therefore somebody who is in a hostel for four months because he cannot get proper housing in our present system is then penalized by the fact that this is where he has ended up because of violence in the family. The child can have a bias towards the violent spouse, for example.

But what we are really after is some recognition of the fact that the safety net that we have put in place for women who are abused in the system, in our society at the moment, that those shelters are considered stable environments, a stable home environment. A woman and a child should not be penalized, as one of the factors that is taken into account around best interests, by the fact that they may be ending up in a shelter.

The economic realities of what happens to women in our society during breakup in violent situations is that this is where they have to stay, not for the few weeks that they were mandated for but for many months, because there is just no second-stage housing for them to go to or because the legal process, in terms of getting money enough for them to be able to live in the society that is so expensive out there today, takes so long that they do not have options.

What I hear is that one of the things that is going to be taken into account—and again, this is not when the access breaks down; this is prior to decision about access and custody being made—is that this can be used by a judge as one of the things that might add up against a woman having her child or maybe even having access to her child. I am just wondering why we did not look at the language of this in some other way so that there would be a clear message to judges that we consider those kind of facilities stable environments and that we do not mean that this can be interpreted in that fashion. I guess I have not heard an answer about that.

The Chairman: Any further comments? Shall clause (c) carry?

Mr R. F. Johnston: No. I would like the vote. I think there is a dissent.

The Chairman: All those in favour, please indicate. Opposed. Carried.

Is there any discussion on clause (d)?

Mr R. F. Johnston: Yes, I think this is a new section and it warrants some discussion. It had an awful lot of discussion in our hearings. It was asked by some groups what the definition of "parenting" is, the ability to act as a parent, and whether or not, in terms of draftsmanship, it would not have been better to have been brought forward.

I am wondering if we can have some comment from the minister's representative here as to why there is no presumption of a need for a definition of a parent when subsequent to this, in subsection 2(3), you go to the point of describing one aspect of bad parenting, which is violent behaviour? I am wondering, since this is a new section and there is no particular section of the law that I am aware of which this parallels, what your response is to that whole question of what this means in definitional terms?

1640

Mr Offer: In responding to Mr Johnston's question, and in fact in

discussing clause 2(2)(d), the new addition as found under Bill 124, of necessity I am going to have to speak to the new subsection 2(3). The first point to be made is that "the ability of each person seeking custody or access to act as a parent" is now going to be taken by a court as one of the elements or one of the items in determining what is "in the best interests of the child."

The question of parenting is going to be one of those aspects, first of all. The second point to be made—and in this case I bring into account subsection 2(3)—is that there is a direction to the judge that in determining and assessing the person's ability to act as a parent the court shall consider—not permissive, no discretion—the fact that the person has at any time committed violence against his or her spouse or child, and it continues on.

We are saying that through a combination of clause 2(2)(d) and the new subsection 2 the presence of violence in the home will now be tied to a person's ability to parent. We think that is necessary. We think it will move in towards what is "in the best interests of the child" and we now have this mandatory direction that in determining the person's ability to parent, violence towards the child or spouse is going to be something which the judge must take into consideration.

It is my understanding from the consultation that many persons said this particular section, this particular mandate, is very necessary.

Mr R. F. Johnston: I want to be clear about this. I am not, and no one is suggesting that the new subsection 2(3) is not an important addition to the legislation. I might say for the time being that it is the only useful addition to the legislation. The link between clauses 2(2)(d) and the next subsection 2(3) is clearer to me, and I understand that.

I guess what I am saying is that what you have done in a funny way in subsection 2(3) is given us a definition of what one element of bad parenting is. It then places an obligation on the judge to take that into account. What you have not done is identify some other matters of bad parenting. Again, if I could go back to children's legislation, in terms of child and family protection, neglect of a child is not seen as violence in terms of the definitions under that act, but is a special term unto itself.

Therefore, a person who habitually leaves a child in an unsafe situation, who has a latchkey child without proper supervision after school and allows the child to be out at hours of the night and in locations of the city which are deemed to be dangerous, can be pursued for neglect of the child and the child can be taken into the protective custody of the children's aid society after due process when that is determined.

What I find interesting about this is that here we have identified an act, which is a model of bad parenting or of a violent parent, and yet we have done nothing to lay out other kinds of guidelines which again happen to fit with other children's legislation that we have, which might also indicate what is either a good parent or other aspects of a bad parent and which we would consider as being things that a judge must take into consideration.

I would suggest that a little more thought on this might have been useful.

Mr Offer: I will make one further response, noting Mr Johnston's

comments. The issue here is not good parent-bad parent. The issue here is domestic violence. It is trying to drive home the fact that the question of violence in the home is and must be tied to ability to act as a parent, and that is what these particular sections intertwined are designed to accomplish.

Mr R. F. Johnston: I just want to say that anyone who writes legislation in as open-ended a way as clause 2(2)(d) as written, and does not believe that parenting is now going to become a major new item, additional to clause 2(2)(e)—which I will ask you some questions about and which is in existing legislation—is either being naïve or does not really want to admit that there will be other interpretations here.

All I am saying is that if you are going to move in this direction—which I am not; this is the one element of the bill I do not mind—I just would have thought that we might have thought of some of the other real concerns around parenting. In a passive kind of way, I think extreme neglect is violence against the child. That is one of the presumptions of child protection legislation, why we put in that definition of a child being neglected. It does not show itself here. We have chosen the one high-profile issue of overt family violence as our means of defining the worst kind of parenting that we must identify clearly for a judge, but we have not done those other things that might be extracted from some of this other legislation, which I think would have been useful to you.

The Chairman: Any further discussion on clause 2(2)(d)? Shall clause 2(2)(d) carry? Carried.

Clause 2(2)(e).

Mr R. F. Johnston: This is a clause which has not been changed from the existing act, and I am not clear—perhaps legal counsel can talk a bit about this—on how this has been interpreted in the past. This clearly was the old parenting concept without the word "parent" being used. It talks about "the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child."

Although this would seem on the face of it to be a fairly sensible kind of inclusion, I wonder, perhaps just because of my political persuasion, whether there has not been some inherent class bias involved in this, and if there is any study that has been done—presumably there is not, because we do not have studies on any of these matters in Ontario—to say whether poor families, women who are in poverty, for instance, and have an ex-spouse who has more money, run into difficulties on this particular element, and that the bias of the courts in some cases may be towards the ex-spouse who has money rather than to the care giver, who unfortunately is on a limited income.

Mr Offer: In terms of this clause, as Mr Johnston is correct in saying, there is no change to that clause in terms of the bill before the committee. It is, again, one of the aspects to be taken into consideration in determining what is in the best interests of the child in a matter of custody and access. That is currently in the legislation and is not a change in this particular bill.

Mr R. F. Johnston: There was one small change I should have said: "necessaries" is changed to "necessities," a slightly more common usage. I have some concern that if you put the two together, clause 2(2)(c), "the length of time the child has lived in a stable home environment," with the problems that have recently happened in the courts, and then you add clause

2(2)(e) to it—I do not know if there has been any study on socioeconomic bias in these kinds of decisions around custody, but it would be really interesting to see them and see if this has had any impact on judges' determinations.

Although we can keep saying that this is just one of a series of factors, at some point either a cumulative effect of the factors or an emphasis on one of the factors affects a judge's determination, and their inclusion is important. I just worry about some of the prejudicial aspects of it that may come up because of the kind of wording.

The Chairman: Shall clause 2(2)(e) carry? Carried.

Shall clause 2(2)(f) carry? Carried.

Shall clause 2(2)(g) carry? Carried.

Shall clause 2(2)(h) carry?

Mr R. F. Johnston: I have a question about clause 2(2)(h). I read this in the initial legislation and I thought, "This is a really interesting inclusion here." I just wanted an explanation of why it happens to be there. We cannot put in anything specific about grandparents, we have been told, because that is not necessary.

Under clause 2(2)(a), which we have already passed, we have the whole question of:

"the love, affection and emotional ties between the child and,

"(i) each person seeking custody or access,

"(ii) other members of the child's family residing with him or her, and

"(iii) persons involved in the child's care and upbringing."

1650

We then add this old (g) and new (h), which says, "the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion." So it seems to me we have been slightly more specific here about the hierarchy than we seem to have been in the general of what is in the first section, because we are now talking about taking into account blood relationships and adoptive parent relationships as one of the things the judge must look at as a series of matters.

I just wondered what the rationale for that was. I did not understand it when I saw it.

Mr Cochrane: The adoption part?

Mr R. F. Johnston: It is not just adoption, of course. It says "the relationship, by blood or through an adoption order, between the child and each person," so it is basically giving status to blood lineage or adoptive parent relationship, and I wondered about that when we cannot do anything specific about grandparents and the sections for that are all-inclusive, so I wondered why it is in there specifically.

Mr Offer: My response to this is going to be very much like the previous responses, that it does not provide for a hierarchy, as was the



objection in terms of the specific inclusion of grandparents. What it does is provide a consideration for a judge in this determination; one of a number of considerations and factors, none of which is determinative, none of which is presumptive, but rather that in this determination as to what is in the best interests of the child, is it right or wrong that a judge, in dealing with that question, take into consideration the child's views and preferences. Yes, that is in this particular subsection.

Any plans proposed for the child's care and upbringing? Yes. The permanence and stability of the family unit in determining the child's best interests? Yes. The whole question of the relationship that the people have who are before the court in terms of blood or adoption order? Yes. No presumption, but rather, one of a number of factors to be taken into consideration by a court in determining what is in the best interests of the child in the question of custody of that child. That is why it is here. That is why it has been there in the past and that is why it is unchanged in this particular legislation.

The Chairman: Shall clause 2(2)(h) carry? Carried.

Shall subsection 2(2) carry in total? Carried.

Subsection 2(3)?

Mr Cousens: Could the parliamentary assistant, in his wisdom, tell us what he means specifically by the words "at any time" and how they could be interpreted? I feel they may or may not have some implications on a situation which people want to draw out of the past. How far back can they go? Is there a sense of reasonableness that is attached to "at any time" that has a sense to it that if someone has in the past committed some act that seemed to be violent, to what degree are you going to dig into the past and to what degree would the court consider that, based on a realistic time frame?

Not being insensitive—I underline that—to the importance of this clause that underlines the importance of violence, it also is important to have a sense of balance as to certain changes that may have taken place over a period of time; that in fact there may have been circumstances where a person did display certain behaviour that can be seen as violent, but now, after a new job, new conditioning, new treatment, new care, new responsibilities, new circumstances and because of time, is no longer considered so. Could you enlighten me on some of those?

Mr Offer: I guess my response is—and certainly I have spoken in terms of subsection 2(3) earlier on and its interrelationship with clause 2(2)(d) of this section—this is an extremely important part of this legislation because the legislation is dealing not only with the enforceability of access orders but also, in a very real sense, with the whole question of domestic violence.

This is one of those sections, because what we are doing with respect to subsection 3 is stating that the presence of violence in the home—and I have said this earlier—will now be tied to the person's ability to parent. In terms of that ability to parent, again, that is one of the factors taken into consideration by a judge; it is taken into consideration in terms of the whole question of the evidence before the court.

But the importance of subsection 3 is that one cannot engage in violence against family members and not expect it to be considered as a factor relevant

to parenting skills and as a factor relevant to the determination of custody. To be specific in terms of your question, sure, it will depend on the whole facts of the case. Mr Cousens, from your comments, I do not think you were retreating from that and I certainly hope not. But the essential point is that the question of violence in the home must be taken as a relevant factor in determining parenting. That is what subsection 3 is all about.

Mr Cousens: Let there be no doubt about my concern about the problems of violence and other problems in the home. Certainly I am in support of the intent. You did not go back far enough because there is the interpretation of what was violence, the time that it may have occurred and the circumstances that may have intervened. To what degree then could someone who is anxious to prohibit and prevent access dig into a distant past to say, "Hey, these are circumstances"? That is another way of phrasing the other question I asked, but I do not think you have answered it.

Mr Offer: The response is that the parties are still going to need evidence in terms of any allegation. I think that is something that is understood and accepted. This particular section applies not only to physical violence but also to threats of violence. That is something this section is designed to also embrace.

In terms of the evidence surrounding any particular allegation, that of course is something that is going to be weighed by courts, as they do now. What we are doing in this section is inextricably intertwining this new subsection 3 with our new clause (d) so that violence is indeed a factor that must be taken into consideration and relevant to the determination of the ability to parent. That is what the purpose and focus is on these, in my opinion, very important amendments to the bill.

Mr Cousens: I want to come back to this. I am going to be voting in favour of subsection 3 because of how it ties into certain other aspects. But please understand that I think it is something that needs to be monitored. It would be interesting if someone were to use subsection 3 in a way—to me, we are in a position here in this committee where we should be able to meaningfully go into potential possibilities of abuse of the system and the law. Is this going to provide such an opportunity by virtue of the way it is phrased?

I do not know of a specific situation, so I am not able to come along and say, "Here it is," but what about a person who has been mentally sick, has had a very serious problem? We are dealing with an illness now that our society is only beginning to understand. You are also talking about something that erupts in the form of behaviour that is seen to be violent by other people and is known to be violent, but the person has gone away for treatment and is cared for.

Again, with good judgements and with consideration of the court, then there is not going to be an overemphasis placed on that. Yet by virtue of the way this clause is phrased, it could be used against such a person who is healed and who is healthy now. That is the question that bears consideration.

1700

Mr Offer: Maybe I could respond to that, because I think what Mr Cousens is directing the focus of his question towards is the denial of access. That is something which is found further on in the legislation under section 35a, where we talk about the legitimate reasons, the second one of

which is "believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised."

That may be the response to your question. The sections we are dealing with are, in the determination of custody and access, dealing with what is in the best interests of the child, and that may very well be the way in which your question is answered.

Mr Cousens: I guess what we really have to face up to is, when is the law ever perfect? You are the lawyers; I am not.

Interjection.

Mr Cousens: You are another lawyer.

Mr Carrothers: I just conceded that you might have a better idea than we do.

Mr Cousens: Okay, I do not know. My background is theology, and I rest on God for some things and then trust nobody. I just think what we have to do is make sure that we watch—

Mr R. F. Johnston: Presbyterian?

Mr Cousens: Yes, it is Presbyterian. I do not know whether we are always right or wrong either. I would just hope there could be some watching over this as the context in which a denial might be made. I make the point.

Mr R. F. Johnston: I support subsection 3 and leave it as the only redeeming element within the legislation. I think it does, again, beg the question around parenting. The existing subsection 3, which is now subsection 4, which is just behind it, uses the term "the person's ability to act as a parent." Again, we have no definition of that or any other inclusion of other kinds of matters that a judge should take into account. I think that is just important to understand. Clause (e) in the previous section may be seen to deal with that; I do not think it does in the specifics. I just draw that to your attention as begging a definition, and I do not know what that definition is under the act.

The Chairman: Shall subsection 3 carry? Carried. Subsection 4?

Mr Cousens: The question that comes out is the degree to which sexual abuse of children is considered by the courts and the number of instances. Certainly the member for London North (Mrs Cunningham), from her personal experience, has indicated in conversations to me the degree to which this whole problem of sexual abuse of children is a matter that is considered a—to what degree has that been considered in all your new clauses as they pertain to all of subsection 2?

Mr Offer: I think the short answer to your question is that subsection 3 talks about "committed...against his or her spouse or child." I think the example you bring forward is surely one that would fall within that particular protection.

Mr R. F. Johnston: It is listed under other acts, but I think it is always considered to be violent.

The Chairman: Shall subsection 4 carry? Carried.



With respect to the entire section 2 of the bill, shall section 2 carry?

Section 2 agreed to.

Section 3:

The Chairman: Mr Offer, are there any general comments or amendments?

Mr Offer: Yes, thank you. First, in terms of subsection 3(3), it is designed because many court orders and agreements simply provide for a noncustodial parent's entitlement to what is referred to as reasonable access. This expression is relatively meaningless if the parents cannot agree on what is reasonable. In other words, the expressions may be interpreted to include such things as every second weekend and so on.

If we want to make those particular orders enforceable, and that is one of the purposes and functions of this legislation, then what we have to have is a mechanism whereby the existing court orders and separation agreements which have used the term "reasonable" have a way in which they can be given a specific form of access, such as a particular time on a particular day. That is what this particular section is designed to accomplish.

I am probably somewhat out of order, but it must be read in context with the following section, which I guess we will get to in due course, but that is what this particular section is designed to accomplish: to provide the mechanism by which parties to an order or a separation agreement can change the particular terms of the custody and access from one that is "reasonable" to one that is specific, thereby being able to make that initial order enforceable.

If I might add one further point—I believe it is this section—we will also be moving an amendment which I have shared with all members of the committee on this matter. Legislative counsel has been helpful, because what we must do is make certain that the court which made the initial order is the one that will hear the variation of the order, so that it would not be in fact a matter which could be deemed a variation of order. Legislative counsel has provided a clarification of the amendment needed, which we have circulated. So it is our intent to move an amendment to this particular section.

The Chairman: Before we move to amendments to section 3, is there any general discussion in response to the explanation by Mr Offer of the purpose of this section? We will take the amendment then.

Mrs O'Neill moves that subsection 28a(1) of the act, as set out in section 3 of the bill, be amended by replacing "a party to the order may apply to a court to vary the order" in the third and fourth lines with "a party to the order may apply to the court that made it to vary it."

Mr Cousens: Could we read it as it is going to read now?

The Chairman: Subsection 28a(1): "If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days."

Are you ready for the question? All those in favour of the amendment? Opposed?



Motion agreed to.

Section 3, as amended, agreed to.

Section 4:

Mr Offer: Basically, the amendment to section 4 is to say that if someone is using the remedy in section 3, they need not show a material change in circumstance and, as such, there need not be a full hearing in dealing with that particular change.

The Chairman: Discussion on section 4? I have not received any notice of amendments to it.

Mr R. F. Johnston: I think this is interestingly an obscurity for people who are watching and trying to understand what is taking place here and perhaps not reading out our sections as we go along. It makes it just that much more confusing for them.

This is a crucial section here, because this is the determination of what this new bill is all about, that is, that for matters that are deemed to be less than substantive change in a custody order, an access order from a judge, this new process we talked about, subsequent to this, comes into play. It is this very presumption of the need for this particular process, which I think and many people who came before this committee think is wrongheaded and is not going to provide the kind of remedy that the proponents of it feel that it will. It is highly problematic.

1710

Mr Cousens: I think that I am satisfied that the amendment is helpful. I know that there is a real problem in the situation for some people. I guess the net result of the parliamentary assistant would be able to satisfy me. What you are really saying is that if one party is unable to handle the cost, then the other person would be assigned the full cost of it. Is that what you are really saying?

Mr Offer: In terms of this proposed amendment, are you reading from section 4 where the change is to section 29 or the following? You might be reading the next amendment.

What we are doing with section 4 of the bill is stating basically to the parties that if they wish to change their order or their separation agreement in terms of reasonable access to a specific access, they need not have to show a material change in circumstance. We are taking away that necessity, thereby allowing the parties to change their order or separation agreement from what is deemed reasonable access to a specific access.

Section 4 agreed to.

The Chairman: An amendment has been circulated which is listed as subsection 4a. It logically follows next.

Mr Offer: If I may, this deals with a section which is not part of the bill before the members. We have had this matter brought up earlier. Mr Cousens had this particular question brought forward earlier in some ways and attempted to try to wind it into another section. We could not do this in this particular situation. As such, we think that it is a necessary point and would

ask for unanimous consent of the members. Maybe it is not up to me to ask for unanimous consent whereby we can introduce this particular amendment.

The Chairman: Based on previous discussions, Mr Offer is anticipating the chair's ruling that when this amendment is moved, it would be out of order in that it deals with a section of the act which is not mentioned in the bill. Therefore, it can be introduced with unanimous consent of the committee. Is there such unanimous consent?

Mr Cousens: There is unanimous consent, but I just wish that the government people would give unanimous consent to the people in opposition who have a desire to do certain things with the bill and give full consideration to it. I happen to agree with the amendment, but I could play the game that the members of the Liberal caucus have in the past, where you would go a long way towards building a sense of democracy and having some impact on what is going on with these bills. If they knew the spirit in which these amendments were being made, in fact they would accomplish a great deal towards that process, instead of acting as they have with a huge majority to do what they want with.

I happen to believe that the amendment that the parliamentary assistant is presenting is a good one, but even if I am presenting something in the future that you do not think is good, do us the justice of at least having the chance to debate it and give us unanimity, because you are very quick, if I may say, Mr Chairman, as a government—and you not being part of the government any more, how could you ever be in a position to do that?

But there are at least four people here who are Liberals and they are just looking for an excuse to throw it out and not have it considered. They have done it to me already in this committee in the last two days, and I am not carrying the same kind of bad spirit and bad will towards the democratic process.

All I beseech of other members in the future is a touch of the same kind of charity that I am showing towards you. I probably will not get it, but what the heck.

Mr Daigeler: I think, in all fairness, the member will have to admit that we have been very charitable towards the opposition members in giving them every opportunity to speak.

Mr Cousens: He is upsetting me.

Mr R. F. Johnston: You do not give us the privilege. We have the right.

Mr Cousens: We have the right, and there is nothing you are saying now—

Mr Daigeler: You were accusing us of not giving you the opportunity to speak.

Mr Cousens: That is not the point, Mr Daigeler.

The Chairman: I do not think the debate we are having is pertinent to the—

Mr R. F. Johnston: But it is fun.

Mr Cousens: Yes, but you had better teach him a few lessons.

Mr Daigeler: I am learning very fast, Mr Cousens.

The Chairman: Unless I hear someone moving an amendment, then we will move on.

Mr R. F. Johnston: Is there an amendment?

The Chairman: Is there an amendment? Who is moving it?

Mrs O'Neill: If we have unanimous consent. Have we got the unanimous consent?

Mr R. F. Johnston: Now that I am back and you have got Mr Miserableness here, do you really expect to get it?

Mrs O'Neill: That is what I am wondering, as you are now present.

The Chairman: If the amendment is placed, then—

Mrs O'Neill: I will place it if we have unanimous consent. I am waiting.

The Chairman: I asked before and it was given.

Mr R. F. Johnston: I was not in the room, but now that I am back I add my voice to the unanimous consent.

The Chairman: Let us get it moved and then proceed.

Mr Offer: You are really gun-shy.

The Chairman: Mrs O'Neill moves that the bill be amended by adding thereto the following section:

"4a. Subsection 30(14) of the said act is repealed and the following substituted therefor:

"(14) The court may require one party to pay all the fees and expenses of the person appointed under subsection (1) if the court is satisfied that payment would cause the other party or parties serious financial hardship."

Is there unanimous consent to allow this amendment?

Agreed to.

The Chairman: Debate on the amendment?

Mr Cousens: How do you make sense? I think that is the point.

Mr R. F. Johnston: Finally there is something, but who knows?

Mr Cousens: What did it take to have you sort of think of something?

Mr Offer: We are always very happy to have the co-operation of opposition.

Mr Cousens: Today is a new day. The sun must be shining somewhere.

Mr Carrothers: Outside, I think.

The Chairman: Is there any further discussion?

Mrs O'Neill: If I may speak to the amendment, I do feel there were representations made and certainly evidence brought forward by some of the witnesses that this would be helpful in some cases, and I do feel it has a value and I am pleased we did get unanimous consent to bring it forward.

Mr Offer: This change with respect to assessors will bring the act into conformity with a similar provision in the Family Law Act dealing with mediators.

Mr R. F. Johnston: The comments of the parliamentary assistant have drawn me in.

Mr Offer: I will never learn.

Mr R. F. Johnston: What a useful concept to actually bring the language of one law into conformity with the language of another law. It is a point that I was trying to make a little earlier on about the way we deal with children under certain legislation and not under other legislation, so I thank you, Mr Offer, for at least acceding to the fact that in parts of this legislation you have decided to do that, whereas in other parts we have sort of neglected that responsibility.

The Chairman: Shall the amendment carry? Carried. Shall section 4a carry?

Section 4, as amended, agreed to.

Mr R. F. Johnston: On a point of order, Mr Chairman: I just wanted to understand what the ruling of the chair was. It struck me that Mr Daigeler was saying the government members give, as a privilege, the right to the opposition members here to speak for a little bit and that this has been given to us now as the largess of the government, rather than as a right of members to be able to express themselves in the committee. I wondered if you were sort of supporting that notion: that it was the largess of Mr Daigeler that allowed us to express ourselves, or whether it was something more fundamentally to do with the democratic rights of elected representatives to speak their piece in committee? I was not clear how you were ruling on that.

Ms Poole: Can I speak to that?

The Chairman: This is not a point of order. The rules upon which we operate are outlined in the rules of procedure and we will carry on with operating under those rules.

Mr Daigeler: Listen to my speech next week in the House.

Mr Cousens: Tell me when it is on, so I can be in the hall.

Mrs O'Neill: I thought you were being charitable.



The Chairman: Are you raising a point of order?

Ms Poole: A point of clarification, if that is possible.

The Chairman: I do not think there is such a thing.

Section 5:

Mr Offer: In terms of section 5, we have just basically moved almost a mirror amendment in terms of the assessors where we had unanimous consent on that. This is the same type of amendment which states, "The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship."

This particular amendment is there for clarification purposes to make it patently clear to the courts that their obligation is that in the event of financial hardship, they can order the other party to make the payment in terms of all of the mediator fees. It is a mirror type of section to the one which we have just passed in terms of assessors.

Mr Cousens: I have some amendments to make to this. Maybe this is the time to put them forward for consideration because they are amendments to section 5. Is this the place to put them?

The Chairman: Yes. Place your amendment.

Mr Cousens: There is a series of amendments and I will put the first one in. They do tie together.

The Chairman: Mr Cousens moves that section 5 of the bill be struck out and the following substituted therefor:

"5(1) Section 31 of the said act is amended by adding thereto the following subsections:

"(1a) The purpose of the mediation shall be to reduce acrimony that may exist between the parties and to obtain an agreement that will assure the child's close and continued relationship with each of the parties.

"(1b) The court shall, if possible, appoint a person agreed upon by the parties, but if the parties do not agree, the court shall choose and appoint the person.

"(1c) A person appointed under this section shall be skilled in the practise of family mediation."

Mr Cousens: If I may speak to this amendment—

The Chairman: Before you speak to it, I would like to rule on it. The amendment, as moved, is out of order because it seeks to delete subsection 31(10) of the act without proposing an alternative to subsection 10. A motion cannot seek to delete a section of a bill and propose no alternative, as the proper course of action is simply to vote against subsection 31(10).

The amendment would be in order if it sought only to add subsections 1a, 1b and 1c to section 31 of the act, but it cannot at the same time propose to delete subsection 10.

Mr Cousens: If I can just take a moment to see what you have said, I just want to read—

The Chairman: If I may just elaborate, in the original act under section 31 there are subsections 1 through 10. The bill amends subsection 10. What you have done with the amendment you have just proposed is delete the amended subsection 10 and then propose new subsections 1a, 1b and 1c. Your amendment is out of order because it seeks to delete subsection 10.

Mr R. F. Johnston: Could I just have an understanding of this?

The Chairman: Yes.

Mr R. F. Johnston: I do not disagree with your notions about deletion being out of order; one just votes against. Are you saying that, although Mr Cousens's motion seems to be dealing with subsection 5(1) rather than subsection 10? In other words, it would be coming before the proposed government change of legislation and that would be in order because it is within the same section?

The Chairman: Yes.

Mr R. F. Johnston: All that he has to do, therefore, you are saying, is remove certain words and just leave the rest.

The Chairman: The amendment, as worded, is out of order. If the mover were to resubmit it and remove reference to deleting the entire subsection 10, then it would be in order.

Mr Cousens: That is what I will do, then.

The Chairman: Then it would be that—

Mr Cousens: I will take that out from my amendment, and move "that section 5 of the bill be amended as follows," and then proceed.

The Chairman: Okay. We will take that as read, then.

Mr Carrothers: It should be "by adding thereto the following subsections."

The Chairman: "By adding thereto the following:" subsections (1a), (1b), and (1c), as circulated. Is there discussion on that, then?

Mr Cousens: There has been a great deal of discussion along the way by quite a number of people about the importance mediation can have as a way of resolving disputes and of serving the needs of those who are involved with those disputes and as it deals with the access of the child. I have tried to be very careful in the rest of the wording of the amendment; I do apologize that we missed that and I stand corrected by what the chair has said.

But the purpose of the mediation shall be, as I have said, "to reduce acrimony that may exist." There are so many different ways the bill provides—certainly mediation is one of the options to assist in the resolution of the problems that are outstanding between a couple and over a child. As the dispute continues, mediation is certainly a process that can facilitate resolution.

As someone who has been involved in very many disputes, I know that sometimes when both parties ask for it a great deal can happen through the sitting down and working through of their concerns and problems. I have seen it in negotiations between school boards, when I was chairman of a school board and chairman of negotiating committees, where we would have a mediator come in, sometimes imposed. That mediator could come along and walk in and force a rethinking and reconsideration of issues that caused both parties, the union representatives and, when I was a trustee, the trustee representatives, to consider all factors. The mediator was able to help lay out some of the ramifications of what was involved.

So, too, in a dispute in the family situation I believe it would help reduce acrimony between the parties; and as a good mediator can act, it would help the parties to obtain an agreement that could assure the child's close and continued relationship with each of the parties. I do not think this is omitting from the bill, but it is certainly something that would give mediation a better chance of working when we are, again, tying it in to that as being the purpose; that the child's primary need of a continuing relationship with both parents is possible and that it be promoted through the act through this kind of amendment.

What I am also saying is that the court, if possible, would appoint a person who has been agreed upon by the parties, but what often happens is that the parties do not know anyone who is capable of mediating but they might say, "Hey, look, there's a chance that mediation would work," and therefore would accept someone who is experienced and skilled as a family practitioner, someone who has done it before. That is why I go further and say, "A person appointed under this section shall be skilled in the practise of family mediation."

The emphasis our caucus is making by this amendment is that we believe it highlights the importance of mediation where warranted. There are going to be times when mediation is not going to be the approach taken, but what it does is give clearer guidelines for the mediation process; then we go on to some of the guidelines of what the qualifications are for a mediator.

I am disappointed that the bill as it was presented to the House in the first place did not elaborate on mediation. It was a good opportunity to do so. It is something that will relieve the courts of extra responsibilities. As you see in my other amendments, which I will place—I do not know whether this is the time to place them; I do not believe it is.

1730

Mr R. F. Johnston: One at a time.

Mr Cousens: I know it is one at a time, but I think it is important that they all tie in together. Since these have been circulated to the members of the committee, they will realize that considerable thought has gone into these amendments. I see them as amendments that will help the process of child access, as something that is a positive statement, that can relieve the courts, that can help facilitate a working through of these major problems. I present them in a spirit that says, "Hey, they are needed," and I sincerely hope the parliamentary assistant, members of the Liberal caucus and others will be supportive.

Mr Offer: I have a couple of things. First, to be clear, we are against the particular amendment which was moved by Mr Cousens. Let's be clear

on that point. We are against it in terms of the specifics. I will go into some of those reasons, because I think we have to do that.

However, we are not against the direction in terms of this whole question of mediation. I think we have to be clear on that. There is work that has to be done in terms of this whole issue and subject of mediation and how it can best be used in terms of not only the question of family breakdown but a whole raft of other examples.

That is why there was a report. There was some allusion to this report during our public hearings. The Ministry of the Attorney General does have an advisory committee on mediation, specifically on family law. During the public consultation, that report was not prepared and released. However, since that point in time it has been released, and it is something that is going to form the subject matter of consultation in dealing with some of the findings, some of the great time and effort which have been expended in this type of exercise and how it can best be used to form a really important aspect in terms of mediation in family law.

As such, we are not at this point prepared to move in terms of amendments on this question of mediation such as proposed by Mr Cousens. We are currently looking into this whole area. It is very new, it is very fresh and the report has just recently been tabled.

So, on the one hand, I reject the amendment; however, on the other hand, I applaud the member in terms of where he thinks we ought to go. All I am saying is that we are currently studying the best way in which to maybe achieve the results that the member wishes to achieve.

I must say that will probably be my response to most of the amendments proposed by the member, again applauding the direction in which he wishes to move. However, we want to be very clear that in terms of mediation we are not going to be hurting anyone. We have heard some very pointed types of submissions by persons involved in family breakdown, in family law, that say you have to be very careful in terms of mediation.

That is where the ministry is currently moving. We have not yet reached a conclusion, no question about that, but this report is going to be the foundation for consultation. I suggest probably the amendments you have proposed will also be taken into consideration when dealing with the area and how we wish to proceed.

I will suggest that one of the concerns I have with respect to this first amendment is the whole question as to whether it almost amounts to a mandatory type of mediation. Mediation is sort of composed of two elements; first, the element of the parties consenting to go through mediation, but it is not only that. There is a second very important element and that is the parties agreeing to the mediator. Once they have agreed to go into mediation, and before they go into it, they have to agree on the mediator. If that is not agreed upon and if that can be foisted upon the party, then it could very well be deemed not to be a voluntary mediation. I do not think this is the area and the direction in which we would want to go.

So in terms of my comments on the amendment, I applaud the direction in which it is going because I think we are going in the same direction together. The final results are not yet determined. They are somewhat premature in terms



of the ministry's study in mediation, and as such, we feel that any expansion of the whole question of mediation is at this point inappropriate.

Ms Poole: Actually, Mr Offer's comment has probably clarified part of my question. I was going to ask Mr Cousens, since subsections 1a, 1b and 1c are to follow section 1, which makes it quite clear that it is at the request of the parties and is voluntary, do you see that your amendments are moving more to a mandatory mediation, simply because there is no agreement by the parties on who the mediator is? I do not know if you would want to comment on that.

Mr Cousens: I think there is a delicate balance that takes place. You cannot mandate it in the sense of forcing it on them. I think there is something very real in what Mr Offer says, and yet I do believe people are often in a state, at this point, where if there is some leadership given and they see—they really have to sort of rethink. I mean, people are going down there, blindly fighting the system. They are fighting reality. They are fighting responsibility. They are fighting each other. If someone can help pull them together—how do you describe it?

There are two different kinds of therapy you can give. There is directive and there is nondirective. Very often, we can see both forms of therapy working, but they are very different. In the directive form of therapy, you have actual advice being given and then people say, "Oh, I will follow that." The nondirective is where you sort of keep hoping it will come out of the discussion and will evolve into a solution. I think sometimes they need the strength in the form of advice and counsel, "You should go and have a mediator," and they have not even thought of it. They do not know who it is going to be. So some of that upfront guidance can make a huge difference to some people.

I think the spirit of what I am doing here in this amendment provides for that balance that says, "Hey, you have to understand that it is not going to work in some cases, and if it is not, back off and go another route."

I do not want to say that mediation is the only way or that it has to be the way, but it is a method that could work and should be given far greater importance in the scale advising this bill. But in answer to Ms Poole's question, I would hope it does not take it down the mandatory route in any way.

Mr R. F. Johnston: I find this whole issue a fascinating area where, I must admit, I have not made up my mind finally on the efficacy of mediation in these areas and the best places for it to be. I found reading the report of the Attorney General's advisory committee, and its final version as compared with its earlier version before the women's directorate got hold of it, quite interesting.

I was very happy to see the changes that start on page 30 and go for some considerable length, raising some of the questions women have been bringing forward about the mediation process. Even where you have the theory of voluntary process, you can be moving into a coercive situation. Power imbalances are recognized by excellent mediators—there is little doubt about that—and some of them are actually well trained to deal with it, but we have so little in the way of standards at the moment.

The theory on mediation policy in Ontario is not accepted by a large portion of the people who actually provide the mediation services out there.

Most of them do not belong to the association that came before us and their status in law, at this stage, is a confused one.

Although I have gone through mediation in this kind of situation, and in my case found it quite helpful, I was in fact quite concerned about the lack of standards and understandings. It was one of Canada's premier mediators I was involved with. At this stage, I do not think I am prepared to support the amendments in this area myself and do not necessarily see them as moving in a direction that will be assistive, until we have a much better, clearer idea of where mediation stands in our legal system and have some very clear definitions laid out for it.

Your subsequent amendments try to deal with that and I appreciate that. I almost think, though, that we need a separate piece of legislation on mediation and then amend these kinds of laws, whether they be the straight Family Law Act or the Children's Law Reform Act, to make them adhere to that principle of what the mediator's role is, before we move down that road too far.

1740

Mr Daigeler: I must say I continue to be unclear as to what the actual objective is of this particular amendment. Section 31 of the act has, in its first subsection, the following, "Upon an application for custody of or access to a child, the court, at the request of the parties, by order may appoint a person selected by the parties to mediate any matters specified in the order." We already have in the act certainly the possibility and the encouragement to make recourse to mediation.

If it is the intention of the mover that we ought to define what mediation actually means, perhaps he should say so. He also says he does not want to go the mandatory route, but as I read subsection 31(1b) it certainly goes in that direction. I am left wondering what is precisely the purpose of the amendment, if it is not to go the mandatory route.

Mr Cousens: In answer to that, I tried to explain it earlier on Ms Poole's question. It has to do with the directive-nondirective approach in dealing with people at such times. There may be certain opportunities in which the court could use the direct approach and say, "Hey, go this way," and they would accept the leadership of the court, sometimes look for it. I think the option is then given to the court in a clear way.

Further to the point, to me the problem we have in a bill such as this—the amendments I am making really tie together. You will see that I elaborate in much greater detail on the other pages, if you have the time to read them, which discuss in great detail how the mediation process can be expanded upon, built upon and become one of the pillars of the system right now in access disputes. Neither am I setting it up as the sole solution. I think that would be wrong. It is an approach that could work and will work and does work but needs to be given that elaboration I am trying to give it here.

You are dealing with the first part of it. It is an expansion of what is there now and, hopefully, an improvement.

Mr Daigeler: There is no disagreement in terms of the importance of mediation. I think the parliamentary assistant mentioned it as in the actual act. I guess Mr Cousens wants it elaborated further, and one can have different opinions whether you want to put in more words than necessary. I

think the objective Mr Cousens seems to have is already present in the act. It seems to me superfluous to add this, but I guess one can have a different opinion on it.

Mrs O'Neill: I am sorry I had to step out to speak to my staff. Maybe you attended to this. I wonder if Mr Offer could tell us if part of the report we are awaiting or the study that is being done has to do with qualifications. I see Mr Cousens has taken some stab at what he considers qualifications. I think several people in the community are confused and somewhat concerned about some people who are practising. Is it part of the study?

Mr Offer: In a short answer, yes it is. It is a fair portion of the report. It talks about accreditation and regulation of mediation.

Mrs O'Neill: There is no such accreditation at this moment, certainly from the government point of view in any case. Is that correct?

Mr Cochrane: Not from the government's point of view. There is an association that is developing levels of accreditation, which are supporting member, associate and practising mediator, with increasing standards as you go up the ladder. But it is not government regulated.

The Chairman: Any further discussion on the amendment before the committee? Shall the amendment carry? All those in favour? Opposed? The amendment is lost.

Motion negatived.

The Chairman: Mr Cousens moves that section 5 of the bill be amended by adding thereto the following subsection:

"(2) Subsection 31(3) of the said act is repealed and the following substituted therefor:

"(3) If the court is satisfied upon application made in good faith that

"(a) there are reasonable grounds for believing that despite the willingness of the parties to co-operate in the mediation, the mediator is unlikely to obtain an agreement between them; or

"(b) a party has a reasonable apprehension of a bias on the part of the mediator;

"the court may by order appoint another person to replace the person appointed under subsection (1).

"(3a) It is the duty of a mediator to

"(a) confer with the parties and endeavour to obtain an agreement;

"(b) terminate the mediation if, in the mediator's opinion, its continuation is likely to result in physical or emotional harm to a party;

"(c) terminate the mediation if, in the mediator's opinion, it is unlikely that its continuation will lead to an agreement between the parties;

"(d) advise the parties if, in the mediator's opinion, an agreement reached between them is unreasonable or not in the best interests of the child;

"(e) promote the best interests of the child.

"(3b) The mediator may confer with the child who is the subject of the access order, with other members of the child's family and with persons involved in the care and upbringing of the child."

Mr Carrothers: Could I make a suggestion? Mr Cousens also has what he has termed subsections 5(3) and 5(4). Noting that the bill contains only section 5, I am wondering if it would not be more expedient to have Mr Cousens move all his amendments to section 5 and we can deal with them all at the same time because I think they all relate to the same subject matter.

Mr Cousens: They really do; they tie right in.

Mr Carrothers: I wonder if that would not just make it clearer, instead of having to deal with it piecemeal.

The Chairman: It is six of one and half a dozen of the other.

Mr Carrothers: I think, though, if we look at it, the way Mr Cousens has brought it in, it has been structured in a package; all four subsections might be spoken of in one body.

Mr Cousens: It makes some sense. Mr Chairman, if I may.

The Chairman: Is there any objection to taking Mr Carrothers' suggestion?

Mr R. F. Johnston: I do not have an objection, just a caution. I understand the point that is being made and yes, they are a package. Sometimes it can become difficult for the chairman. If we have several amendments dealing with slightly different matters along the same theme that are being discussed, it can be problematic. It is just a caution. I am willing to go that route because it looks from Mr Offer's statement as if the government is not going to accept them. It might even read better if you were to have them all together and then just have a short debate on the topic.

The Chairman: Mr Cousens moves that section 5 of the bill be amended by adding thereto the following subsection:

"(3) Section 31 of the said act is amended by adding thereto the following subsection:

"(7a) If, in the mediator's opinion, a party is likely to suffer physical or emotional harm as a result of meeting with another party to the mediation, the mediator may conduct the mediation by meeting with the parties separately."

The Chairman: Are your comments lengthy with respect to introducing this amendment?

Mr Cousens: I think they would be longer and knowing that the committee wants to—



The Chairman: The committee is aware that we wanted to adjourn a bit early today and I am wondering, having placed this amendment, whether we should start the debate on this amendment now.

Mr Carrothers: I do not know whether Mr Cousens is going to move his subsection 5(4). I see that is still part of that same package. In the interest of having it all on the table—

Mr Offer: It could possibly be argued that not only subsection 5(4) but the following amendment are also part of the same package. It is all dealing with section 31. We could possibly use this time to move all of those amendments and save debate for the next day, without having to read them in the next day.

The Chairman: Why do you not read in the rest of them? The only note I would caution you on is that I am advised by the clerk that in the next one, which is subsection 5(4), the subsection 31(10) seems to be superfluous; in that next page. It is already in the bill.

Mr R. F. Johnston: If I might, before we go much further, again remembering for our own purposes as a committee that it is probably not a bad way to go, but for anybody who is trying to watch this—I do not know if we will be on TV again on Monday. For anybody who is trying to follow this and joins us Monday, if we have already read everything into the record and then have a debate on something that is already read into the record, it is going to be pretty confusing as to just what it is we are discussing. It might be just as expeditious at this point to deem these as read at the moment, but then start at that point again as a package on Monday.

The Chairman: In that we will be starting off with Mr. Cousens's comment on the rationale for his amendments, I think it will make sense. Why do we not adjourn for now?

Mr Carrothers: That sounds very logical to me.

The Chairman: Will we deem it to have been read as part of the amendment then and continue on Monday with Mr. Cousens starting off?

Agreed to.

The Chairman: The committee is adjourned until Monday following routine proceedings.

The committee adjourned at 1751.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
TUESDAY, 6 JUNE 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Bossy, Maurice L. (Chatham-Kent L) for Mr Carrothers

Cousens, W. Donald (Markham PC) for Mr Jackson

Hampton, Howard (Rainy River NDP) for Mr R. F. Johnston

Offer, Steven (Mississauga North L) for Mr Beer

Clerk: Decker, Todd

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga  
North L)

Cochrane, Michael, Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, 6 June 1989

The committee met at 1556 in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Section 5:

The Chairman: The committee will come to order. This is a meeting of the standing committee on social development convened to consider Bill 124, An Act to amend the Children's Law Reform Act.

The committee has been proceeding through clause-by-clause consideration and we had reached section 5 of the bill. Just prior to our last adjournment, Mr Cousens had introduced a rather lengthy amendment in three parts to section 5 which deals with section 31 of the act.

I am going to first recognize Mr Cousens. Rather than read out the full amendment all over again, perhaps Mr Cousens could summarize this part of his rationale for the amendment and get us on track for the discussion on this amendment. Mr Cousens, are you ready to proceed?

Mr Cousens: If I can just take half a moment, my colleague has something to say.

Interjections.

Mr Cousens: When we did adjourn, as the chairman has indicated, I did submit a series of amendments. These amendments have to do with the importance of mediation as a way of helping to settle or resolve disputes. The amendments are, in the legal language, required for Bill 124 to be changed to begin to reflect a process that I and our party firmly believe would improve the resolution of disputes and the problems that go with them.

I know that the amendments were read into the record but, just to sort of touch on them, they start to show how mediation can work. My amendments outline the duties of a mediator and shows that the mediator can confer with the child. The mediator can also set up different parts of the process to mediate separately with those who are involved.

The amendments also recognize that there are situations in which mediation is not going to work. Mediation is not the only solution to this major problem that we are dealing with in Bill 124. I guess to me, as a caucus, our members have spent a considerable amount of time. I do not think you can ever spend enough time because there is just so much involved in dealing with the people who are facing disputes and facing problems.

I want to reiterate the role of mediation in custody and access disputes and some of our rationale for it. I would like then to refer to the report of the Advisory Committee on Mediation in Family Law as part of the rationale for what we are suggesting in these amendments.



What we are really saying is that mediation does become a means of helping to resolve disputes. In its present form, Bill 124 sets out mediation as one of several options. One of the common arguments against the current system is its adversarial nature and the stress that is created in an already stressful situation. What we are saying by this amendment is that mediation can provide a way in which the parties to a dispute can sit down with a trained person, together or separately, to resolve their differences.

In advocating mediation, we are not necessarily calling for mandatory mediation but rather mandatory entry into mediation as a viable dispute resolution mechanism. In fact, this is a term we have taken from Mr Honey, the divorce mediator from Ottawa; mandatory entry is put forth by him.

Another thought that we have behind our amendments is that they more clearly spell out the role of a court-ordered mediator both in making recommendations on custody and access and in resolving current access disputes. My proposals include a clearer framework for mediation, for example, who shall act as a mediator, the guidelines for the process and the levying of fees for mediation.

For instance, often mediation poses a threat to women who have been victims of abusive spouses. Being in the same room with such a spouse can be extremely emotionally painful and possibly damaging. Our amendments would allow the mediator to terminate mediation under these conditions or to see the parties separately. Also, our amendments allow the parties to ask for a new mediator if there is a perception of bias on the part of the mediator.

Another major point in our thinking is the importance that is going to be given to the compilation of a mediator's report and increasing the legal force of this report for judgement by the court. Our amendments spell out what must be included in the mediator's report and provide for the types of recommendations which may be made in the report to the court. They also provide ways in which these disputes can be heard and judgement made on a much more timely basis, which is crucial given the government's proposed timing in launching and hearing a motion.

In subsections 35a(7) and (8), a motion must be made within 30 days of alleged denial and must be heard within ten days of being served. Therefore, we try to tie our amendments into those conditions. Further, given the current backlog of cases before the courts and the onerous nature of attending court proceedings, it is only reasonable to look at ways to further streamline the process for the sake of our system and more importantly, far more importantly, for the sake of the parties in the dispute.

In spending time looking through the Report of the Attorney General's Advisory Committee on Mediation in Family Law, quite a number of points have been made and made extremely well by the members of that committee who worked obviously very hard and gave much of their time to make this a good report. Interestingly enough, Mr Cochrane, who is the legal counsel on the committee, was involved in that. Even before we began this committee this afternoon, we were talking about the dedication of all those people who gave so much of their time to make this such a worthy presentation for the Attorney General (Mr Scott).

That is an excellent process. The problem we have is that again the process, if we allow it to just spend more and more time—and considerable research has been done. I think what has happened is that so many of the conclusions drawn from that committee substantiate the claims and further

emphasize the importance of the kinds of amendments that our party is proposing that would give mediation a much better opportunity and, certainly in the eyes of the law, a clearer responsibility in helping the working through of those disputes.

I would like to just tie it in, because the amendments I have made and the ones I am about to make are again all tied together to this whole subject of mediation in family law. Some of the conclusions that were made by the committee Mr Cochrane chaired are very similar to the kind of conclusions that I have drawn, my party has drawn and society as a whole has drawn. Therefore, in that spirit, we are trying to bring forward those kinds of recommendations in the amendments that I have proposed.

For instance, conclusion 1 from the Attorney General's report that we received was that "mediation tries to assist clients to come to an agreement, in the hope that it will encourage increased compliance with the agreement and thereby reduce the need to turn to the court for enforcement or clarification."

I believe that and I think that the clients and the people who are involved in this process are looking for guidance and looking for leadership. Certainly, if it is brought in and has the spirit behind it that mediation has the respect of the court, then in the case of those who are in need of somehow just having a little bit of reconciliation of some of their problems and removing some of those emotions, it could make them more compliant.

Another conclusion drawn by the Attorney General's report was that it may reduce family tension. Mediation "may reduce family tension and conflict, may reduce the wasting of family assets in litigation..." There are only a few lawyers in this room, but—I do not want to do any favours for the lawyers. I really want to do the right thing for those who are in need. We are all aware, as legislators, of the heavy costs associated with the law and using litigation as a way of solving problems.

Indeed mediation, further supported in this report, "may reduce the judicial and legal workload in the area of family disputes, thereby saving costs in the administration of justice." Everybody will save money. The justice system will save money. The people who are seeking to resolve their problems will save money and the lawyers—well, they will find other things to do with this society we are building.

Further in this, in conclusion 3, mediation "is not just an alternative to the adversarial process but a complementary adjunct." I do not by my amendments—when you are talking on one subject in this Legislature, people are inclined to say, "Oh well, you only support mediation." That is not so. I see it as one of a number of methods by which you can solve this, and it is complementary to everything else within the government bill. But these amendments that we have suggested would in fact give it a better chance of working.

Another conclusion drawn by the Attorney General's report is that "mediation in family law in Ontario has been a positive development and should be more widely available in accordance with the model proposed by this committee." The committee has developed a model where mediation could work, and I see it as something that could work sooner, rather than later.

Another point is that current "mediation services in Ontario are essentially a patchwork of models that are not funded or supported in any consistent way." That is a conclusion drawn as well. I believe, as does the

committee, that mediation should be available to persons in all regions of Ontario. I think that is a self-evident truism.

One of the other conclusions is that "mediation in family law is only effective when those using it do so willingly and voluntarily." We have that covered in the amendments that I have proposed.

Further, it says in conclusion 9: "While mediation should be voluntary the delivery of publicly funded mediation services or access to the family court process should be subject to a procedural requirement for a one-time attendance at a public legal education session early in the process. Such a requirement could be dispensed with by the court in appropriate cases such as cases involving violence or where to do so would be in the best interests of children."

We are all going to have to become more aware, as we have on medical terminology and medical terms. When you are sick, you start reading a book to find out what it is that you have and what the treatments are, and then when you go back to the doctor, you are in a position to be able to help the doctor treat you more effectively. It is no different in this whole business of child disputes and child access.

Those who have gone through the hassles of the court and suffered the penalty of loneliness, isolation, separation and the agony of the two parties warring with one another really begin to run to the library to understand what is going on. Many of them almost become amateur lawyers, when they are as informed as they are. In fact, you could tell that some of the people who made presentations to our committee in the public hearings had been through it and had that sense.

1610

I believe that mediation, as again recommended in the conclusions of the committee to the Attorney General, should be available before proceedings have been commenced. It should be available during the course of the proceedings and after completion of legal proceedings. At all stages, mediation can become a very useful adjunct to the whole system and the whole process.

I am not in total agreement with all the recommendations made by the committee. To me, it might well be a matter that there could be some working out of other amendments where the committee does go in a little different direction. I think the committee did not want to see the mediator developing a draft of the text for final agreement and would have preferred that what was done just really stay between the parties rather than become something that could be used within the system by the courts. I think, with some training and further elevation of the mediation process, that would not be a severe problem.

I believe genuinely that mediation, though it has been available for a number of years, at present is really not as fulfilling, as complete, as full a level of service as it should be. I would like to see a specific plan by the government which could be enhanced through my amendments and then other regulations and other factors that would bring it out as something important to the working out of disputes.

I believe that the Attorney General's report echoes many of the proposals I am making in these formal amendments. I believe that the Attorney General's report does support our amendments with a few slight areas of difference, which to me will not change the primary intent of what we have presented in our amendments today.



I really hope that this committee is able to accept these amendments in the spirit in which we have offered them. We have had them tabled for an extended period of time when they were earlier presented by Mr O'Connor, one of my colleagues in the Legislature, and I carried them forward under my name in subsequent copies of the bill in different sessions of the Legislature.

I am enthusiastic about the need for mediation to work. I have seen it work personally when I have been involved in strikes, and that is another sense in which you have got the confrontation between two parties. Yet I have seen mediators from the Ontario government and the Ministry of Labour come in and truly assist those parties to come together even at a point when they did not want to talk to one another, let alone look at one another. The mediator would go from room to room and finally begin to work it out, and before you knew it, we were all in the same room and had come together in satisfactorily developing a resolution to what was otherwise an impossible problem.

We are dealing with children. We are dealing with a societal problem. We are dealing with greater numbers of them now with so many people who are impacted by this legislation. I think we need to have options so that those who are involved in this process can be assisted by it. I present these amendments. I suppose if there is any question that members have, I would be pleased to go into it further and I would appreciate your agreeing with them.

The Chairman: Thank you, Mr Offer—sorry, Mr Cousens. My apologies. I had Mr Offer's name in mind because he was next on my list to speak, so I will recognize him.

Mr Offer: I think that in our last meeting period I did comment at some length on these amendments and I would like to do so once more, but fairly briefly.

Mr Cousens: Are you saying you have changed your mind, Mr Offer?

Mr Offer: First, as I indicated last time, we will be voting against these proposed amendments. However, I would like to go further by indicating that I think these amendments, as well as the recent report through the Ministry of the Attorney General dealing with mediation in family law, do take us along a path in dealing with the whole issue of mediation.

I think Mr Cousens ought to be commended for proposing these amendments, but, to be sure, this is an area that does require further study as all members of the committee realize. Even during our hearings, we heard a number of submissions by different parties dealing with certain concerns they have with the whole question of mediation and how that process can best be used to accomplish the purpose for which it was devised.

There is much study and much reaction and comment required on the report by the Ministry of the Attorney General, and that, I understand, shall be forthcoming in the near future. That report has been circulated and I think it is our obligation and responsibility to await the comments and reactions of those who have received the report as to the recommendations contained within it. I think it is a responsibility the ministry must meet and is going to meet. The acceptance of these amendments at this particular time would very much defeat the whole question of asking for reaction and comment from the general public on the report on mediation. That is why we are going to vote against the amendments put forward by Mr Cousens.



Mr Daigeler: As the parliamentary assistant just said, I think there can be agreement in principle with the aims Mr Cousens is putting forward in his amendments. There is no question mediation is something all of us hope for and seems to be a direction in which, hopefully, the different parties will move.

The question is whether right now is the time to put into law the specific provisions spelled out in these amendments, especially in the context of the bill we have in front of us. Especially for people who are not familiar with the act, the act actually has the provision for mediation. It is not as though the opportunity is not there. In fact, the opportunity is encouraged. Section 31 of the act does precisely that. It encourages people to make use of mediation and sets in place some general guidelines. I am not sure whether at this point they should be much more specific than they are.

We have just received a report from a committee that was set up by the Attorney General, and in fairness one has to take some time to look at these recommendations and see whether these recommendations put forward by the committee should be adopted or should not be adopted, and if they should be adopted in law.

While I agree the basic objective of the amendments is a praiseworthy one that I certainly can support, I do not think at this time in the legislative development we are ready for these kinds of amendments. I think they are not reflective enough yet with regard to the experience we have of mediation.

1620

Mrs Cunningham: I am of course speaking in favour of the amendments. I should say that when Mr Offer made his very first statement he talked about a need for further study. I would say that, provincially, persons like those involved in this report of the Attorney General's Advisory Committee on Mediation in Family Law—if everybody looks at the first page, you will see who they are, including Mr Cochrane, the chairman. I suggest we are very much ready for these kinds of amendments. People really think this whole issue has been studied to death. What I think the government should be concerned about is providing the services everyone is asking for.

On the very last page of the report, in conclusion 50, they talk about mediation, just how it should take place and who should be there in order for it to work. It was conclusion 50, not the very last one, but on page 119. I think these are the very concerns Mr Cousens's amendments are trying to address, and that is recommendation, "Any mediation service established should be encouraged to play a significant role with respect to access to children." I thought what we were talking about in this legislation in fact was the best interests of the child. It goes on to say, "Services of any facility should include the provision of a place for supervised access or custody and act as a pickup/dropoff point for access visits." It goes on to talk about the role of family clinics.

I think it is Professor Richardson who has done a rather credible study on mediation and I think he is well respected. I do not know how much more the government is looking for, but I think basically that if you do not want to vote in favour of the amendments, it is probably more to do with the fact you do not want to put the money behind the services. If that is the case, that is

what I would say, but do not say you do not want to do it because it needs to be further studied. It does not have to be further studied.

Most of these people have been involved in this for some 10 years, saying the same things. The only real solution is for people to be well educated and to have the kind of support and counselling necessary during an extremely difficult time in their lives—that is at a time when their family is breaking up—and for the children, and that is who we are particularly concerned about.

I think where Mr Cousens has been coming from in his amendments is for the children especially to know their parents are going to be given help, and indeed they themselves if they need it. That takes resources and I think these amendments in their very nature will provide or indicate to the government that it will have to provide those kinds of resources.

I respectfully submit that a new piece of legislation without the resources to support it does nothing. It is as simple as that. In any speeches I am going to be making in the next few weeks, including to law school graduates, I guess my point is going to be that this government in Ontario is bogged down with acts we do not want and do not need. This would be a good example of them.

I think the kind of amendments to the Family Law Reform Act that the committee is looking at in Bill 124, without the additional amendments of Mr Cousens, do not do a thing. They give some guidance to judges and they give more reasons for parents to spend time documenting and going back and forth to lawyers and the courts, and that is not where the support should be for families. That is what we are talking about. There is no point to it at all and we are really missing a wonderful opportunity.

I think you should be going back, as a committee, to the government and saying this is what came out in the public hearings, this is what people need and this is what they are desperately crying out for. Unfortunately, for all of us, as we look down the road in our society in Ontario, it does not look as if things are getting any better for families.

Sooner or later, we are going to have to provide the kinds of services, which do not have to be particularly expensive. We have a wonderful opportunity here to get people helping people. Volunteers can be trained. It is serious work. I know that. But we have a lot of young people who have gone through some very difficult times growing up, who are quite frankly prepared to learn whatever they can to help others.

This bill is not going to do it. I am sorry we are not going farther with the amendments because they would give more direction to the government, and I have already said that, so it is with great disappointment that I speak to these amendments knowing that, by the sound of things, they will not be passed.

I respectfully submit to Mr Offer that if he is going to say that the amendments are not appropriate, it should be because of the services they will require, that the government will have to provide, and not that they need more study. That is an insult to the people who sat on this committee and to the people who have been working in the field for some 15 or 20 years. They know what should be happening and they came here, took a lot of time and put their hearts into their presentations to this committee.

Mr Hampton: I am one of those who would hope that one day mediation may perform a greater role in the settlement of these kinds of disputes. I quickly canvassed much of the material that was brought to this committee by women's groups during the public hearings stage and I was unable to find anywhere in there an endorsement of the mediation process.

I recall that in the meetings I had with several women's groups and individual women who are quite knowledgeable in the area of family law and the Children's Law Reform Act, several women came to meet with us to state over and over again that as mediation is currently set out in Ontario, there is a great deal of distrust by women of the mediation process. Women who are generally knowledgeable of this area of law and of these procedures in law do not want to see it proceeded with further than it already has been without a very real change in the way mediation is conducted.

Inasmuch as I think Mr Cousens has attempted to flesh out the bones of mediation that are found in the Children's Law Reform Act, I do not think the amendments as proposed give mediation, as it is currently found, a great enough change in character that a number of women who have spoken to me would find satisfactory. For those reasons and other reasons, I will be voting against the amendment. Inasmuch as mediation may be an acceptable dispute resolution method for the future, Mr Cousens's amendments do not make it so now. This is an area where I think the government has to do some serious work.

I would agree with the comment made by Mrs Cunningham. That is simply this: I would have thought we would have learned by now that you cannot solve these kinds of disputes by sending people back into the courts. Somehow in our communities, money will have to be made available for things like supervised access and money will have to be made available to ensure mediation is carried out in a better form and in a better manner than it is now.

Merely passing a law such as this without providing the funding up front is really engaging in what I would call a hypocritical public relations process. There are people out there who think this bill is really going to do something, but I would suggest to you that the people who are in the know are very much aware that it is not going to do a damned thing, or perhaps will make matters worse.

I would agree with Mrs Cunningham in the sense that if the government would put some money into ensuring that mediation can be conducted properly, that mediators have some sort of professional certification and so on, then mediation might become a more acceptable process. In the same way, if the government put money up front to ensure we have supervised access centres so that supervised access can become a reality, then it too would be more satisfactory. The answer is not this legislation and the answer is not, I am sad to say, Mr Cousens's amendments. Without the money up front, much of what is here is meaningless. We have said that before in this committee, and I think we will say it again and again as we sort through these amendments.

1630

The Chairman: Are we ready for the vote on the amendments? All those in favour of the amendments put forward by Mr Cousens? Opposed?

Motion negatived.

The Chairman: Mr Cousens, you had a further amendment.

Mr Cousens: Indeed, Mr Chairman. It has been circulated to the committee and I will read it into the record.

On section 5a, I move that the bill be amended by adding thereto the following section:

"5a. The said act is further amended by adding thereto the following section:

"32(1) The mediator shall file"---

The Chairman: Excuse me for a moment. The clerk advises me that your next two amendments are basically introducing a new section 5a and that we should close off a vote on section 5 before recognizing you to move those amendments. Do you have some closing comments on section 5, Mr Offer?

Mr Offer: No, I believe I spoke to section 5 earlier. There are no further comments on my part.

Section 5 agreed to.

The Chairman: Now you may proceed, Mr Cousens. Sorry to interrupt you.

Mr Cousens: After five days of bell ringing, it is just difficult to really remember everything.

The Chairman: To get back in the swing of things.

Mr Cousens moves that the bill be amended by adding thereto the following section:

"5a. The said act is further amended by adding thereto the following section:

"32(1) The mediator shall file a full report on the mediation, including anything that the mediator considers relevant and a statement showing the amount of time the mediator spent conferring with the parties, the child and any other person.

"(2) The mediator shall include in the report,

"(a) a statement of the terms that the parties have agreed to with respect to the custody of or access to the child, signed by the parties; or

"(b) a statement that the parties did not reach agreement.

"(3) If, in the opinion of the mediator, the parties failed to reach agreement as a result of the unwillingness of either of them to co-operate in the mediation, the mediator shall include a statement to that effect in the report.

"(4) The mediator may recommend in the report,

"(a) that the terms of the order in respect of the custody of or access to the child be varied in accordance with the terms agreed to by the parties or the terms, if any, recommended by the mediator;



"(b) that the child or any person with a right to custody of or access to the child obtain individual or family counselling;

"(c) that any person with a right to custody of or access to the child participate in a parental education program;

"(d) that access to the child be carried out under supervision or at a supervised access centre established under subsection 35(3); or

"(e) any other measure likely to resolve the access dispute.

"(5) The mediator shall file the report with the clerk or registrar of the court.

"(6) The clerk or registrar of the court shall give a copy of the report to each of the parties, to their counsel and to counsel, if any, representing the child."

Mr Cousens: I would like to speak to it.

The Chairman: Yes; carry on.

Mr Cousens: I tried to elaborate on some of the activities that would be part of the mediator. Inasmuch as the committee, though full of kind words and good intentions, has deigned not to support other amendments on mediation, I have the suspicion that comes with experience that it is highly unlikely this amendment is going to carry. As previous amendments I tabled on mediation did not really get past our own party's support, it is highly unlikely you are going to have any change of heart or mind.

None the less, it does not take away the commitment that I have to the process that I believe is an integral part of resolving what is a flawed and poor bill right now, and I do believe that even without having passed the other amendments, these stand on their own and can, in fact, begin to give mediation a much greater role to play in the process of resolving disputes.

What I have said here is that the report by the mediator would be filed with anything that is relevant in those discussions, that it would be something that would then include the terms that the parties have agreed to with respect to the custody of or access to the child. Right now in the bill there is nothing asked for from the mediator. Why not specify? Why not say: "What I am really saying in this amendment is that you will then begin to have some meat and potatoes around it. You will know what the limits are."

Right now you say you support mediation. The member for Nepean (Mr Daigeler) says it correctly. Yes, it is included in the bill but it is not really much elaborated upon so it is not really going to work. It is not going to be part of the process in fact. It is in theory. The fact is you have to have something around it so there is a context and a relationship established so that the mediator has a role to play. It is understood. It is defined. It is in the law and something can be done with the report that he is going to have.

Now may I suggest, Mr Chairman, as a committee, forget all the negatives you have talked about in the past and think positively on how the mediation could work with these amendments. It will begin to give the mediator a job to do that is understood and appreciated by the court. It will also allow then to

be considered by the court, something of the recommendations and the statements and the consensus that has been developed.

And also through these amendments, if the mediator's opinion is such that parties have failed to reach agreement—and you know if it is going to happen—either party will dissent and decide that they do not want to co-operate, the mediator can then pass that back as part of his statement saying, "There was no co-operation and so therefore, no reason to proceed."

However, I have suggested in these amendments that there a number of things that the mediator could report. When you are commenting back, the member for Mississauga North (Mr Offer), in hopefully support for these amendments—I am hopeful that when the mediator comes back and makes his report, that he could define something of the terms of the order in respect to the custody or access of the child and vary the terms, that he can make certain recommendations.

He could also recommend in his report that the child or any person with the right to custody of or access to the child obtain individual or family counselling. Often that can be helpful. He could recommend that any person with the right to custody of or access to a child participate in a parental education program. These people are going to be capable of understanding there are certain needs that people have and maybe we, as a society, have to begin to understand that there is a role to training and educating people and sometimes it is a matter of someone to come along and say: "You need that help. Go and get it here or there." Some people are just waiting to be told and then they will respond and become better people because of it.

The mediator could well recommend that access to the child be carried out under supervision or in a supervised access centre and I have to thank the member for Rainy River (Mr Hampton) for what I think is going to be his support for this recommendation, which is further elaborated upon in another amendment that I have to present to this fine committee—this committee which I think is taking rules and orders from the parliamentary assistant who sits and nods a certain way and that is how people vote. Even when they come in with motions of their own, they are told: "Hey, back off on that one."

The mediator could also suggest other measures that could help resolve access disputes. What I also suggest is that the mediator would file a report with the court and then that report would become something as part of the data used by the council in all parts.

I believe very, very strongly in the process of mediation. I believe it is something that should be part and parcel of the government thinking now, not way on in the future. I think we have a chance to help all those people who are in disputes now and not just far in the future. I think this committee is in a position to take leadership now rather than someone else in the future because probably many of the people on this committee will not be on it in the future. It is a chance to make a dent in a very important process.

I plead with the members of this committee to look very seriously at these amendments as being responsible and as ones that would give mediation a chance of working, of really having an impact on what is otherwise a flawed piece of legislation and something that has not been fully and adequately addressed by the government. Now is our chance to do it with these amendments. I move them, Mr Chairman, and I hope that you will be able to support them as well.

1640

Mr Offer: I very much appreciate your commitment to the process of mediation, as you have indicated, and your embellishment of that commitment to this particular process, Mr Cousens. However, I must say we cannot accept the amendment which you have provided. Many of my comments are very much in keeping with my response to your earlier amendments and, I must say, in response to some of the comments made by Mr Hampton to those earlier amendments because, as he indicated, he has gone through some of the Hansards. As our committee members well know, there were presentations made to this committee by a number of women's groups who did have some very large concerns about the direction one wants to take in dealing with the process of mediation.

We heard the unequal bargaining position and the impact of physical, mental, psychological and economic abuse in terms of mediation and how that has to be taken into consideration. As I have indicated earlier, we have in our hands a report by the Ministry of the Attorney General, dealing with mediation in family law. I think it is incumbent upon us to circulate that report, to get the impact of that report and the reaction to it from women's groups from the legal profession and from social work agencies. We have to hear their reaction to those recommendations contained in the report so that when we do proceed in terms of mediation, we do so knowing full well what the reaction is to the report which has been exhaustively completed.

At this point we cannot accept this amendment. I would also like to indicate two specifics in terms of why we cannot accept this amendment. The first, in subsection 3 says, "If, in the opinion of the mediator, the parties failed to reach agreement as a result of the unwillingness of either of them to co-operate in the mediation." I think if we heard a question or a concern, loud and clear, during our consultation on the bill it was in fact this, that you cannot have the unwillingness of a party being used against him or her in terms of mediation, which cannot be compulsory and which has to be voluntary. This really does embody the most basic of fears, in terms of the groups that came before the committee.

Second, in terms of what the mediator may recommend, I have read closely the possible recommendations in the report. I have also read closely the recommendations contained in the ministry's report in terms of family law mediation and they are different; in terms of recommendations they are very fundamentally different in what the role of the mediator is.

I think it is these issues that really must be fleshed out and grappled with before we move further in determining this particular process and how it may or may not impact on the parties to a dispute. As such, I believe it is premature to accept an amendment of this kind at this time.

The Chairman: Mr Cousens has indicated that he wished to speak, but perhaps he could close the debate. Is there anyone else wishing to comment on this amendment? I will go with Mr Hampton first and then, Mr Cousens, you can close the debate before we vote.

Mr Hampton: I want only to say that adding more weight to the mediation process as it is now constituted, and that is what I see this amendment doing, is not going to change the basic character of mediation. The problem that women's groups find with mediation as it is now constituted I think can be summarized as this. Women feel oft-times when they go to court that if they do not agree to mediation, they will be perceived as being



obstructionist and will be perceived as being unwilling to find a co-operative solution.

The problem, however, with mediation as it is now constituted is that very often women enter into mediation in an unequal position. They find the whole mediation process one where they are dealing with someone who has more financial capacity than they have, or where they are dealing with someone who may have abused them in the past. If something is not done to address that initial concern women have, and if they do not agree to mediation somewhere along the custody and access process while it is before the court, they will be perceived as being unco-operative or obstructionist.

That, as I understand it from most of the women's groups I have spoken to and many of which came before this committee, is the root and the start of the problem. Simply laying more meat on that problematic bone is not going to make it any better. I will vote against this amendment, because, as I said previously, it does not change the underlying and very serious problem that a great number of women find with the mediation process as it is now constituted in Ontario.

The Chairman: We will go with Mrs Cunningham first.

Mrs Cunningham: I think this particular amendment is supporting the mediation process and has in fact given more direction to the bill itself. It is not unlike the government's amendment with regard to section 35a which we will be looking at, where you have given with regard to the motion to enforce the right of access, the order for relief, the period of compensatory access and then specifically what constitutes wrongful denial of access; all the points that were made there that we heard so much about and will be speaking to, I am sure.

I will be interested in the government's argument around direction when we come to that part, because that is all we are trying to do when it comes to the mediation process: give some more direction to the process itself.

I am going to take this opportunity to go right back to the real problems with the legislation as it now exists. The role of the mediator that Mr Offer refers to is one that I think is in question in the field. Just what should the mediator do? What should he or she write in a report? What role can they play?

I agree with him to a certain point, because I think most jurisdictions look at it in a different way. The point of the matter is that depending on the case the mediator may in fact have different functions, and to take the time to try to write it all down is going to take this government a very long time.

That is not what Mr Cousens is worried about, but I think what he is doing is giving some guidance right now where very little is available and very few expectations are available. I do not think we should fool ourselves when it comes to the role of a mediator.

One of the letters we received in looking at the whole problem with both the bill itself and the legislation was from the London Family Court Clinic, where in fact the people who wrote this particular letter were members of the committee that produced the report that Mr Offer is wanting to distribute—the Advisory Committee on Mediation in Family Law. I would suggest that we are just dragging our feet by sending that particular report out. I do not think



it is a complicated report. I think it is a report that we could probably spend another year or two getting a response to.

1650

I am not sure whether the public in Ontario or families in Ontario have another year or two for public input. Perhaps Mr Offer would like to interject at this point in time and talk about it or at least advise me around what he means by public input and what the time frame would be. Why does Mr Offer not take this opportunity to respond to that? He mentioned it.

Mr Offer: I would be more than happy to respond because I was listening very closely to your comments. As I was listening to your comments, I was looking once more through the report by the ministry in terms of mediation. I think that this report carries with it, with all of its recommendations and the reasons for those recommendations, a great responsibility to receive from women's groups, those who are in social work and the social agency area and those who are in the legal profession or the judiciary, that type of response to this report so that we can be absolutely certain that whatever course we choose, we choose it in full knowledge that we have an exhaustive, well done report, but also that we receive comments and reaction from those who may very well be impacted by the route which we take.

There is no time frame at this particular point in time because of the fact that this report has now just recently been released and the report itself has just recently been distributed to a number of interested parties, not only in this province but nationally. This is an extremely important area in family law. It is extremely important. We have been sensitized through this committee to the importance of mediation, through those who have come before the committee and said, "We have concerns with mediation because etc." or, "We have fewer concerns," but again for their own reasons.

As a responsible government dealing with a very sensitive area, the very least that one can do is to ask for a person's response, comments and reaction to a report which deals with such a sensitive area. That is the stage that we are in right now.

The Chairman: Mr Cousens.

Mrs Cunningham: Could I just continue on? I was getting some—

The Chairman: Oh, I am sorry.

Mrs Cunningham: No, I was responding.

The Chairman: Carry on.

Mrs Cunningham: I am sorry, Don.

Mr Cousens: No, that is fine.

Mrs Cunningham: I am responding to this report. Perhaps Mr Offer could advise as to how long this committee sat and when it began its deliberations.

Mr Offer: I have just been advised by the chairman of the committee that it was announced in March 1987. It commenced its work in June 1987 for

approximately one year, which followed a further six months thereafter in dealing with how the report and the recommendations were to be framed.

Mrs Cunningham: I am now speaking out as a person who welcomed this report and who was very much aware of the kinds of deliberations that were going on. I guess, to put it bluntly, it took a couple of years to do the work.

The Chairman: Mrs Cunningham, I would gently remind you that the matter before us is the amendment moved by Mr Cousens. We are getting diverted into a considerable discussion on the report.

Mrs Cunningham: This report has significant impact on the legislation—

The Chairman: I realize that.

Mrs Cunningham: —and it was Mr Offer who referred to it and referred to my remarks as something that has to go out for input before Mr Cousens's recommendations could be considered by the government. That is why I am responding to the report.

I think Mr Offer's comments will probably influence the vote significantly and I am obviously trying to significantly influence the vote in another way. The reason I am saying this is that, obviously, it has taken a couple of years for this report to be written: March 1987 to February 1989. Quite frankly, I do not know when it was made public. I think it was within the last month. Am I correct?

Interjection.

Mrs Cunningham: In May. So it was completed in February and tabled with the public in May. I do not think this particular government is noted for its speed in response, but there may be some very good reasons for that. I am not one to criticize, because I do not know. All I know, from a public point of view, is that it took more than two years to look at mediation in family law with some experts, in my opinion, probably the best in the province.

I do not think you are going to get too much negative reaction from this report. What you are going to get is a lot of support. There may be some polishing up around some of the conclusions, but I do not think there will be anything significant enough to change, for instance, Mr Cousens's amendments, unless of course the government wants to look at the amendments seriously.

My suggestion, at this point in time, Mr Offer, is that given that this report was tabled in May and given the information that you now have on mediation as the experts and practitioners see it, based on their experiences in the courts and support services to the courts and extensive experience with families, is that you take some of the information received in this report and put it in to fixing up this piece of legislation.

If you are acting responsibly, to send this out again is a joke. You have got the information. We are literally studied to death in this province. Some of the information in this particular report is extremely helpful, and you could, in fact, be giving more direction and more support to the piece of legislation we are looking at.

You have all your reasons in section 35a, and I would like to know where the evidence for those kinds of support are coming from. I will be asking some

pretty good questions on why you have a particular clause in and why you have not got the next one in and those kinds of things. Mr Cousens has simply tried to give the same kind of meat to the role of the mediator or direction to what the mediator does.

If you do not like it, then tell us why it is not working and not that you are not ready for it because we need more input. I think you can change it. Take the words and fix them up; spend some serious time around it. But do not just sit there and say, "We need more input." We do not need any more input. You have people in your department or any one of the members on this committee. You could send Mr Cousens's amendments to them and say, "How can we make them better?"

You are sitting here with a great big majority in this particular committee and wanting to get through a piece of legislation that is not going to do anything for kids at all, and certainly not for families, and you have got an opportunity to do it. My plea is, do it. If you do not like what Mr Cousens is trying to do with his amendments, which is to give more direction and more support to a process, do not sit there and say it is because you need feedback on this report, because it is not. You have enough information. I am fed up sitting around. Two years for this report is fine and dandy, but do something with it. Make good use of it now and do not send it out again. These people are the best you can get and they have given a lot of themselves to it.

I do not know what else to say, except that I am saying what I just said on behalf of children and families. You had a whole public here that said you are misleading people by saying, "This is going to work." It is not going to work. So why do you not take the input, take some time? If you took two years to develop this and more, for heaven's sake, take another six weeks and seriously look at the input you got. What we are saying is that we need supervised access programs. For heaven's sake, put it into law and do something about it.

The other thing that is being stated is this—I am going to read it from a letter I got here from the London Family Court Clinic. They are so right, because I have been on this merry-go-round for 10 years:

"In our attempt to lobby for public funding for these services," talking about mediation and supervised access, "we have been stymied by conflicting views on who should provide funding. Is it the responsibility of the Ministry of the Attorney General, the Ministry of Health or the Ministry of Community and Social Services?

"It has been suggested by a number of critics of the proposed legislation that it will result in more cases being brought before the courts, which must, in a very limited amount of time, sort out truth from fiction and render some order that will be in the children's best interests."

That is what mediation is all about. That is what supervised access is all about. That is what family court clinics are all about. That is what is going on out there right now. For heaven's sake, say it in the law. Tell the public that you are going to provide the services they need. If you do not like Mr Cousens's motions that are trying to give some direction to mediators, do not use this report as an excuse. There must be a better reason than that.

The professionals out there are not going to be fooled by this piece of legislation and neither are families. That is my response to my own colleague's amendments, because I think he is very serious about trying to

improve this particular bill and this particular act. I do not want it sloughed off by saying, "We need input on this report." Give me a better reason.

Mr Cousens: I thank the member for London North (Mrs Cunningham) and respect the fact that her experiences have been very close to the courts and many families in these situations. We all come at it from different directions and our own perspectives.

I did not hear an answer coming back from the parliamentary assistant on his timetable. He gave his rationale for what he is doing. Maybe you are not allowed to say that, because the Attorney General has not told you what to say, but maybe you could tell us when you plan to do something about these issues, if they are as important.

In your comments on the nonco-operation part, part 3, let me assure you that all that does is allow the mediator to drop out of mediation if there is no sense of co-operation. It has no judgement to it. Mediation sometimes can work when it is given a push, and when it does not, there are other things; there is no judgement to it. The statement you made, I would have to tell you, does not convey the intentions that the section is written to convey. I would say that the parliamentary assistant to the Attorney General was putting words into someone else's mouth with his idea that it is judging. The fact is that mediation can work, and sometimes it does not. If it does not, fine; it has been tried and then you back off from it and go to something else. The way you talked about it had nothing close, no similarity, to what is written or intended.

The honourable member made another point which had to do with—I did not write notes.

Mr Offer: I remind you that it was my reaction to the recommendations and what that connotes as being the role of the mediator.

Mr Cousens: Okay. All I can say is that probably when you come out with your own bill, you will include these amendments. What you are doing is saying something now and when you have had a chance to sleep on it, look at it, think about it and listen to others, you will probably go with it.

I have tabled this and I feel it has been important to have this debate, Mr Chairman. I have no further comment.

The Chairman: Are you ready for the question on the amendments? Mr Hampton, something further?

Mr Hampton: I believe that under the rules, before a vote we can request some time to confer with a colleague. I would like to ask for that time before the vote.

The Chairman: Before the vote on this amendment?

Mr Hampton: Yes.

The Chairman: Okay. Your request is acknowledged. How long will you need? You are allowed up to 20 minutes.

Mr Hampton: I think I may need 20 minutes.



The Chairman: We will resume in 20 minutes and at that time take the vote.

The committee recessed at 1704.

1723

The Chairman: Mr Hampton requested the recess, and he has returned. The matter before the committee is the amendment moved by Mr Cousens, which is adding a section 5a that amends the act by adding a section 32, as outlined.

Shall the amendment carry? All those in favour of the amendment? Opposed?

Motion negatived.

The Chairman: Mr Cousens has one further amendment.

Mr Cousens moves that the bill be amended by adding thereto the following section:

"5a. Section 35 of the said act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsections:

"Supervised access centres

"(3) The Attorney General may establish one or more supervised access centres.

"Idem

"(4) The purpose of a supervised access centre shall be,

"(a) to provide a neutral place for visits with a child, with or without supervision; and

"(b) to provide a neutral place where a child may be picked up and dropped off by a person exercising a right of access."

I regret to inform Mr Cousens that in view of the fact that this amendment attempts to amend a section of the act not amended in the bill, I have to rule your amendment out of order.

Mr Cousens: There are references in the bill to access centres, are there not? May I ask that first of the parliamentary assistant? Can you say that access centres are not referenced in the bill at all?

Mr Offer: No.

Mr Cousens: Categorically, unequivocally? You are telling the truth, the whole truth and nothing but the truth, and as a lawyer, as a respectable gentlemen, at times?

The Chairman: My ruling is based on the one we had in earlier sections. There were amendments that attempted to amend sections of the act not dealt with in the bill.

Mr Cousens: I can just comment, if I may.

The Chairman: No. The amendment is out of order, and—

Mr Cousens: I take strong exception to this. In this bill, which is dealing with the Children's Law Reform Act, not to have any kind of consideration of supervised access centres is failing indeed in providing the kind of context that is needed for the families in dispute, for the children who are suffering under it. If you are going to say that this amendment is out of order, I challenge the ruling of the chair.

The Chairman: Shall the ruling of the chair be sustained?

Mr Daigeler: Could you repeat your ruling, please?

The Chairman: My ruling is that the amendment moved by Mr Cousens amending section 35 of the act is out of order because section 35 is not dealt with in the bill; there is an attempt to amend a section of the act not dealt with in the bill.

Mrs O'Neill: We have had a precedent on this.

Mr Offer: May I make a suggestion? Keeping in mind the ruling of the chair, maybe this is one thing that could be done. We could ask for unanimous consent of the committee to deal with this particular section notwithstanding the fact of your ruling. It would allow Mr Cousens to put an argument in terms of this section on the record.

The Chairman: Would you withdraw your challenge to the chair so that I can test the committee for unanimous consent?

Mr Cousens: Yes.

The Chairman: The amendment can be considered with the unanimous consent of the committee. Is there unanimous consent?

Agreed to.

The Chairman: Okay, Mr Cousens, you have moved your amendment. You may speak to it.

Mr Cousens: I thank other members of the committee for their indulgence.

I just have to believe that the act is flawed. The law is not doing the job. We have to find ways in the province to help solve the problems of people, and we are talking about children.

It really would not be hard to get examples because of the number of people who are going through this whole access problem. I happen to know many people, too many, who are in the midst of major battles. Never mind what is going on in parts of the world where you have people shooting each other and destroying lives: We are destroying lives in other ways, by virtue of not giving them an opportunity to come together.

There has been so much anger developed within them. Their frustration level is so much beyond their capability of handling it. What I am trying to

bring forward with this amendment is a reasonable way in which we, as a government, are providing a context in which they can find some opportunity to maintain the links with their children.

1730

I happen to have seen men and women who are crying out for that chance, and it is not there. They are desperate for it and they are broken-hearted. There is a sense in which their lives are not fulfilled.

We as a government have an opportunity to do something to help them with that. It is not something that is going to happen overnight, but at least through the implementation of this kind of action, you are going to have the possibly begin to develop.

I have seen a father who has not seen his child for several years. I have seen mothers in the same circumstances. It has to do with trust and the breaking down of trust. It has to do with the total corrosion of those relationships. If we were to open up the possibility of supervised access centres, I know and believe that some of those people would begin to get over the hurt and pain they otherwise have to endure all their lives. Just now, it is going to continue.

We have had concerns today about other kinds of abuse to people. In fact, I am impressed that the CBC could put together a small program on incest at noonhour. They had people phoning in on incest to the radio station. It is really quite amazing that it is opening up, and we as a society will begin to understand just how much hurt and damage has been done to people along the way. We as a society are beginning to deal with tough issues. How good it is that we are able to deal with them. Some of the people who have their flashes that go into the past are able to bring them out and we are finding resources to help them; not enough, but we are moving towards it.

Can I just tell you something? The heartache for those people who did not even have a chance for supervised access with their child or children has to be just so miserable. Why can we not do something about it? It would not take much to have them come in here and explain in camera what they are going through and the problems they are having with it.

I feel so strongly about this being a way to help them deal with life, their loved ones and one another, and the scars they have because of their inability to deal with their child properly and because society is not allowing them to get to their child. If they begin to have some sense of relationship, then they will grow, having a better sense of themselves, and their self-respect, self-esteem and self-worth will go up accordingly.

If we continue to close the door to that possibly by not having supervised access centres, then we continue to say, "You are not really understood by the law, you are not going to be dealt with by the law and we really don't care."

I know that all parties and all members of the committee do have a sense of compassion for people, or we would not be here. Why, then, can we not do something about it through this kind of amendment that could make the law more of a social conscience to those who might not otherwise have that opportunity?

I do not know what will happen if you do not give it. I will be interested in hearing what the parliamentary assistant has to say. Maybe this

will be the one amendment we will be successful in bringing forward to what is otherwise a very flawed bill, if there is a chance that the government can accept this amendment in the spirit in which I am trying to present it and with the full support of our caucus.

It is something that is needed; it is wanted. I have had letters from, not hundreds, but a large number of people, many of whom are constituents, saying this would have meant so much to them if they had been able to have it.

I appreciate the fact that there is unanimity in at least tabling it. If that step can go one bit further, unanimity in passing it, I will leave this place a happy person and so will many others who will begin to have a sense that we have looked at them compassionately. I so move it.

Mr Offer: In response to this particular amendment, the government is not going to accept the amendment dealing with the matter proposed by Mr Cousens. There are certainly some examples of supervised access, some of which we heard in our hearing, one of which I know is found in part of the area which I represent, in the regional municipality of Peel. At this time, all of those supervised access facilities are not funded and never have been funded directly by the government for that specific purpose.

I have heard some of the argument by Mr Cousens through you, Mr Chairman, to the members of the committee, and I think that is one of the reasons why the government, specifically the Ministry of Community and Social Services, undertook a pilot project in the Kitchener-Waterloo area, Lutherwood, to look at the whole question of supervised access facilities, whether there is any way in which they could be devised and formed on a province-wide basis.

That study has gone on for a number of months. The data is currently being evaluated at the Ministry of Community and Social Services. At this point in time, it has not come out with its reaction to the Lutherwood pilot project. It is the position of the government that until it has made that determination and that evaluation, we cannot accept this amendment.

Mr Daigeler: Again, I think Mr Cousens was very oratorical about his concern. I think he is addressing something it is difficult to argue with, but when you look at the actual amendment, what does it say? "The Attorney General may establish one or more supervised access centres." Unless I am wrong, there is nothing that prevents the government or anyone else from going ahead with access centres. They do not need legislative authority to do that.

Really, what does this amendment add? Quite frankly, the suspicion I have is that the purpose of the Conservative Party in putting that in is to say: "Well, here it is in the law. Why is the government not setting them up?"

As Mrs Cunningham already said earlier, "Why is more money not being spent on that?" I can accept that as an argument, but is that a good enough reason to put it into law? The possibility of setting these things up is there already. In the opinion and judgement of the government, whether that be through the Ministry of the Attorney General or any other ministry, it may decide, perhaps even in the near future, to further encourage access centres. It is an ongoing debate. People are putting forward the case for the access centres and it may well still win out, but I do not see the need to put that into law and therefore I do not see the need for an amendment.



Mr Bossy: This follows on Mr Daigeler's remarks. The motion seems to be sort of vague when it says "one or more centres." It does not really hit at it. The intention of the motion is very good, I feel, but it is very vague: "one or more centres"; "The Attorney General may..." That opens up the question of where and under what conditions. Is it on trial? There are an awful lot of questions. I believe we should maybe be looking at expansion and making access more available, but I do not think this amendment rings a bell with me towards the legislation. I could not go along with the motion, well intended as it is, Mr Cousens. It is too vague. It does not really specify.

1740

Mr Hampton: This is the part of the debate I have looked forward to since the beginning. While Mr Cousens's amendment may not have the strength I would like it to have, I think what Mr Cousens has presented is where the government should have started and should be starting in its whole approach to the problem of access and custody that is out there.

I think it is fair to say that the idea and the intention that is embodied in this amendment speaks directly to where the government is conceptually wrong. Access for Parents and Children in Ontario is an organization that does not exist any more because it could not get any government funding and could not continue to exist on contributions from the United Church and from other voluntary organizations. The one functioning access centre in Metropolitan Toronto and indeed in the so-called Golden Horseshoe, the greater Toronto area, if you wish, is now gone.

If the government wanted to evaluate how necessary this kind of centre is, how effective it is, Access for Parents and Children has records going back four years. It has four years of records indicating exactly how many families it has helped, indicating what has happened in the way of some parents and former spouses being able to go from a situation which required, by a court order, supervised access to then go on to voluntary supervised access, to then move on to a situation where the former spouses could agree, independent of supervised access, on how custody and access were to be exercised.

All of those figures are there. They are known to women's groups. I would indeed even argue that they are known to men's groups. The loss of that one access centre is incredible. I would suggest that the impact of the loss of that centre cannot be estimated in terms of the rights of children, the privileges of children, the rights of parents and trying to allow former spouses to work out their differences in terms of custody and access.

Again, I think it illustrates conceptually exactly where the government is wrong in this whole problem. Sending people back to court who have already fought out custody and access orders through a court, as if that will provide some sort of magical resolution, is an entirely wrongheaded solution and an entirely wrongheaded approach.

It would seem to me that, if anything, the statistics that have been kept by Access for Parents and Children indicate that what is not needed is another round of conflict. What is needed is an agency which facilitates former spouses or parents exercising access, whether they have difficulty in exercising access because one of the parents has abused the children in the past, or because one of the parents may have tried to kidnap the children in the past, or just because the former spouses cannot get along at all. For whatever reasons, I think Access for Parents and Children has illustrated that

what is needed is an agency, a supervised centre to allow former spouses to work those things out. Then, over time, some of the wounds, some of the nastiness, some of the altercations that have ensued during the marriage relationship or during the breakup will heal and that access will be eventually exercised without the need of supervised access.

But alas, in this whole bill, the government seems to feel and seems to be of the view that the way to solve an ongoing dispute is to send the parties back into a mechanism which historically enhances the dispute and, I would argue, leads to further altercations and further disagreement.

Mr Cousens's amendment may not be strong enough, but having this section in the bill would almost make up for all of the wrongheadedness that exists in this bill, and would be, I would argue, one piece of salvation for this bill; a life-raft you could hang this bill on, because it is going to need a life-raft when it is enacted.

I want to respond briefly to the comments made by the parliamentary assistant when he noted that there was a government test program out there, a pilot program, the Lutherwood program in Kitchener-Waterloo. I want the parliamentary assistant to know what people from Access for Parents and Children in Ontario and what I think a lot of women in the women's movement think is happening. -

The Ministry of Community and Social Services has actually suspended Lutherwood. It terminated it early.. That is the view out there. Community and Social Services simply said, "End it now." The view out there is that it was ended now because Community and Social Services does not want to be stuck picking up the bill for the debris that is going to result after this becomes legislation. Community and Social Services does not want to be stuck in the situation of already having a pilot project in existence and then parents from all around the province coming to it and saying, "We have to have more of these." It has decided to get out of the whole picture now.

That is the view held by Access for Parents and Children and that is the view held by some people in the women's movement; that Community and Social Services is so concerned that this bill is wrongheaded that it does not want to be left picking up the costs of the increased spousal altercation that is going to result from this bill becoming legislation.

While Mr Cousens's amendment may be too weak for me, while his amendment maybe should be the start of a whole new conceptual approach to this problem, I will vote in favour of his amendment, because to me it is the only thing in this whole process that has made any sense. I would suggest to the government that to a lot of parents and former parents out there, and especially to a lot of women, it is the only thing in this whole process that has made any sense.

Mrs Cunningham: In speaking to what I think is the key motion this committee will be looking at during these deliberations, I would like to refer to a couple of comments that were made by members of the government.

First, one of the criticisms in this whole area has been which ministry should take on the responsibility for providing the services. We are now looking at the Ministry of the Attorney General, and we do have an amendment before us that says the Attorney General. I think that in itself is rather significant, because we now have the opportunity to take the lead and say we will be responsible.

Of course, in the act itself, subsection 35(1) talks about supervision of custody or access and subsection 35(2) talks about the consent to act. If you look at page 15 in the act you can see that all Mr Cousens is really doing is adding a couple more sections so that the public is not confused by legislation and very clearly understands what responsibility and whose responsibility it is when it comes to this access idea.

The time has come. Perhaps the government did not recognize it during the Bill 124 hearings, but certainly as a result of the hearings it should have recognized that the plea from the public was that this particular ministry or some ministry take on the responsibility, and what better opportunity will you have to do it? In fact, you already have by virtue of the Children's Law Reform Act.

1750

All we are really doing is saying that if there is any question out there, whether it be the Ministry of Health, the Ministry of Community and Social Service or the Ministry of the Attorney General, we are now making it very clear that it is the Ministry of the Attorney General that may establish one or more supervised access centres.

At this time, I think it is probably a responsible way of looking at it in that the amendment is somewhat permissive in not saying "shall." That was one of the points made by one of the members of the government. I would love to say "shall," but that would not really do anything. We would have a piece of legislation that would not work, quite frankly, at this time. I think some time down the road when the resources are there, you can make it mandatory, but at this time, I will live with "may." I do not like it.

Then, the purpose of the supervised access centres is just elaborated upon. I do not see anything wrong with this at all. I do not see anything except clarifying just what the supervised access centre is. Again, I will say this: If anyone has any difficulty with the wording or the intent, I guess I would like the debate to be around that. If they have a better idea or if they think it is not appropriate to use the words "a neutral place" or talk about "picking up" and "dropping off" or something like that, I suggest that is where the debate ought to be, not whether it be included.

It definitely supports the work of the Advisory Committee on Mediation in Family Law. At one point, this particular committee asked for some clarification around the role and availability of access centres. I think the researcher was asked to do some work for you, Mr Chairman. There was some question as to just who was responsible for these centres. There were some letters sent out, and a memo came back to you on 17 May from Susan Swift, the subject being the follow-up to supervised access programs and the interministerial committee on family violence.

I was interested to note in the letter dated 12 May 1989 from the assistant deputy minister of the Ontario Women's Directorate, Naomi Alboim, that she makes a conclusion in her letter. She says, "While we fully support the development of supervised access facilities across the province, I do not believe these programs fall within the current mandate of the interministerial committee on services related to wife battering."

Because that particular ministry was asked as to supervised access programs and whether they could assist you in any way, Mr Chairman, I think we are really searching almost everywhere to see who we should be asking or who



can support this kind of programming, whether it is important or whether we should be supporting it.

When we get into the Ontario Women's Directorate, away from the ministries of Health and Community and Social Services and away from the Ministry of the Attorney General—I think we have searched everywhere for whoever should accept the responsibility for supporting and bringing to the attention of the public that this government thinks this is important enough to recognize in law.

What the assistant deputy minister is saying, quite frankly, is that they are extremely supportive of the services but it is not the mandate of the particular committee.

She goes on to say, "In addition, I might note that resources allocated to the initiatives are limited. Despite significant increases in funding over the past four years, there are still not sufficient resources to fully support" what they are responsible for now, "shelters and community counselling programs designed specifically for victims of wife assault." They go on to talk about their own responsibility and the lack of funding for the programs they are responsible for now, never mind the access centres.

In making the point, I think we have exhausted all the ministries, and it is the responsibility of this ministry. I am underlining, I think, the importance of the amendment's saying "the Attorney General may establish."

I would like to go a little further and talk about what the government has done in looking at supervised access centres. Again, I am looking at a report dated 12 April, again, work for this committee, "To the standing committee on social development," from Elaine Campbell and Susan Swift, who are providing research with regard to supervised access programs in Ontario.

Mr Chairman, I have to give you credit for doing your homework. My question would be: What use is the homework if we do not pay any attention to it? I am saying we have exhausted all ministries in looking for whose responsibility these programs are. I think they are the responsibility of the Attorney General.

Now we are trying to find out what has been happening across the province, and I think a very nice piece of research was provided for the committee. We find that the numerous programs were not there. In fact, they are somewhat limited, but I think they are extremely valuable in the experiences they have had. If you are saying we have one centre we looked at, Lutherwood—that is the program I am aware of in Waterloo—in fact there are others that have been operating and good statistics have been kept, and the programs have been carefully evaluated by their own personnel and by the boards they report to.

Do those bells ringing mean the committee has to—Would it be appropriate for me to continue?

The Chairman: I am informed by the clerk that that means the House has adjourned and that the committee should also adjourn.

Mrs Cunningham: Can we continue with this particular point, then, on Thursday?



The Chairman: This committee stands adjourned until Thursday following routine proceedings. Hopefully, we can wrap this bill up on Thursday.

The committee adjourned at 1759.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
THURSDAY, 8 JUNE 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Substitutions:

Campbell, Sterling (Sudbury L) for Mr Beer

Cousens, W. Donald (Markham PC) for Mr Jackson

Offer, Steven (Mississauga North L) for Mrs O'Neill

Clerk pro tem: Manikel, Tannis

Staff:

Schuh, Cornelia, Deputy Senior Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Cochrane, Michael, Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, 8 June 1989

The committee met at 1621 in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

The Chairman: I call to order the standing committee on social development, convened to consider Bill 124, An Act to amend the Children's Law Reform Act. We have been proceeding through the bill clause by clause and presently before the committee is an amendment moved by Mr Cousens with respect to supervised access, an amendment adding section 5a. I believe we were in the midst of discussion on that amendment, the amendment having been permitted by unanimous consent of the committee. I do not have a speakers' list.

Mr Cousens: Mrs Cunningham was next.

The Chairman: Mrs Cunningham was next, so we will take it from there.

Mrs Cunningham: I was in the middle, but if you can just give me a minute, Mr Chairman, I gave my things to the clerk and now they are out of order.

The Chairman: I do not have a speakers' list. I think you were the last I had. If anyone else wishes to speak, just let me know, and I was going to let Mr Cousens wrap up the discussion on his amendment.

Mrs Cunningham: I am ready.

The Chairman: Carry on.

Mrs Cunningham: I was speaking to Mr Cousens's amendment and I was not being very complimentary to Mr Offer.

Mr Offer: Now I remember where you left off.

Mrs Cunningham: That is where I left off.

As a matter of fact, as a result of our deliberations on the committee, Mr Offer, numbers of persons are requesting the report on mediation. I think that is a credit to you for having raised it as being an important report.

I will now go back to the work that you asked the researcher to do in preparation for the decision-making, Mr Chairman, and speak very briefly to the experience that the province has in supervised access programs across the province, which I think are being treated rather lightly by the government.

They have specifically referred to the Lakeshore Area Multi-Service Project in Etobicoke—I am sorry, the Lutherwood program in Waterloo—as being sort of the pilot. In fact, I certainly commend that program as being a very



Ayes

Cousens, Cunningham, Johnston, R. F.

Nays

Campbell, Carrothers, Daigeler, Offer, Poole.

Ayes 3; nays 5.

Mr Cousens: I was a member of the committee and I was not asked for my vote.

The Chairman: Did you miss Mr Cousens?

Clerk of the Committee: Yes, I did. I am terribly sorry, Mr Cousens.

The Chairman: Members of the committee, that completes all of the amendments we have been given notice of. We are ready to begin section 6 of the bill.

Section 6:

The Chairman: Section 6 of the bill introduces a new section to the act, section 35a. Perhaps the parliamentary assistant would start off by outlining the purpose of section 6 and then we could get on with it from there.

Mr Offer: In discussing section 6, which adds section 35a, in my explanation I will be running through it almost subsection by subsection. I note there are 15 subsections, so bear with me.

With respect to subsection 35a(1), basically this is the new remedy for a noncustodial parent who is entitled to specific access to return to the court that made the order and ask for assistance. That is the first subsection, which is really their right to the enforcement of access.

Subsection 2 is really the centralization of four potential orders dealing with access denials. I note that three of the orders are already available in the system currently. Those three are the compensatory access, the supervision and the mediation order. The new order is the ability to require the responding party to reimburse the moving party for any reasonable expenses actually incurred. If I might, I would like to deal with those four potential orders in this discussion.

The Chairman: I am sorry to interrupt, but perhaps I could seek some guidance from the committee. Are members of the committee going to want to speak individually on these subsections? I notice the parliamentary assistant is going into some detail on some of the subsections. It might be more productive, if there is going to be discussion on each of them, to take them subsection by subsection as we go along.

Mr Offer: I am in the hands of the chair but if, for instance, there is going to be no discussion on subsection 35a(1), I would not mind making a slight explanation as to what it is, just for clarification's sake. If there is going to be any discussion as we proceed---

The Chairman: Should we take it as a section as a whole?

Mr R. F. Johnston: I do not mind if the parliamentary assistant

wants to deal with this new section in opening remarks and deal with it in as much detail as he wants at that stage. That is fine; I think it would be appropriate to do that. I would then like to move through subsection by subsection from my perspective after I have made some remarks on the concepts therein.

The Chairman: I am sorry to interrupt. You can carry on going through the section.

Mr Offer: Okay. Do I understand that I should be carrying through all of the subsections at this particular point?

Mr R. F. Johnston: However you want to do it.

Mr Offer: Section 6 of the bill is very much a central section in dealing with this act, the matter before the committee. If there is going to be discussion on this particular section which contains 17 subsections, then I personally would not mind discussing some background to subsection 35a(1) and then going on to subsection 2 and subsection 3 and proceeding that way.

The Chairman: I think if there is going to be detail, it would be fairer to do it that way.

Mr Offer: I think it might be clearer.

The Chairman: Okay. Have you completed your general comments on an overview to section 6?

Mr Offer: No, I have not completed my general comments on section 6, save as to say that it is the central matter in dealing with this particular bill and I look forward to discussing the particulars of the section subsection by subsection as we proceed. Would you like me to do it on that basis?

The Chairman: Okay, let's proceed with subsection 35a(1).

Mr Offer: Subsection 35a(1) is the new—I see Mr. Johnston's eyes looking at me and saying, "Hold up."

Mr R. F. Johnston: It seems appropriate that if we are going to have an overview that we might get an overview from the opposition parties and then go through each subsection. I have a lot of things I want to say about the overview but I think it would be difficult to deal with the overview of the section in any subsections.

The Chairman: Okay. We will have comments on the overview of section 6, and then we will proceed subsection by subsection.

Mr R. F. Johnston: I agree with the parliamentary assistant. This is the pivotal section of the act and is as important to the nature of where this act is going as was the initial section 4a which changed the principles upon which we decide the best interests of a child in these matters or the matter of family violence being a specific matter which was going to be listed in terms of a person's parenting capacity.

This section revolves around what a person who is having trouble getting access can now do, as has been explained to us by counsel and by the parliamentary assistant in the past. This does not deal with the large matters

of changed circumstances which sometimes mitigate against the access continuing for one reason or another, but it has to do with smaller matters that should be dealt with expeditiously in order to make the access order continue unless there has been a denial of access for a good reason.

The difficulty that I see with the concept of this is twofold. First, I think the concept of listing the denial of access is wrong, "Except where...." Trying to get that defined is going to be a very difficult point before the courts.

1640

It is going to be contradictory to the intent of the bill, which is that these things should be dealt with speedily, and contradictory to the notion that within 10 days after somebody files their complaint of access being denied, that this shall be heard by oral evidence. I will come back to that as we get to those sections, but I think we heard consistently from lawyers before us how they felt this was not going to work, with oral evidence, in the straightforward, quick way that the government seems to believe it will.

I think that, plus the notion that this should be dealt with in 10 days—unlike any other court action that I can think of, and I am not a legal expert, but that was certainly what people said to us before the committee—strikes me as unusual.

Yes, this is a matter which needs fairly speedy resolve, but there are any number of people languishing in holding cells at this moment who would just love some quick action on matters which have taken away their freedom and liberty in Ontario and they do not necessarily get this kind of action. Certainly, other matters around family law do not get this kind of speedy remedy.

So it is an interesting precedent. It is, of course, a court remedy precedent and we have spoken at length about why we do not think that this is the appropriate first step to be taken here in terms of access difficulties. Rather, the expansion of supervised access programs in the province and facilitating judges' actually being able to order their people there for periods of time where that supervised access can be monitored and then hopefully changed to unsupervised access would have been much better approach for this government to have taken.

Just as an aside, and I will come back to this as we come to that section, the gratuitous section about the person who has failed to use the access that has been afforded him usually is, as I think most women's groups who came before this committee said, a sop to women's groups which is, for all intents and purposes, not a particularly useful addition to the legislation. Again, that is not me saying it and if you want the quotes again from the groups that came before us saying that, I will be glad to go back to them.

The Chairman: Mr Cousens, any general comments?

Mr Cousens: I am generally in favour of the intent behind this section, that is going to help resolve difficult situations when there is an access problem. I think that is the rationale behind it, and the speed at which it is going to be dealt with—The one thing I would love to see happen, and I do not have the confidence that it will, is that there is going to be a constant review of just how this works. Somehow, in our whole legal system, once we pass a law in this Legislature, it takes so long to get anyone to

revisit it and bring it back in and check to see how well it is working.

When was the last time the Children's Law Reform Act was amended in this way and in these areas? I see it almost as if we, as a group of legislators, had better start putting far more of a priority on to family affairs and how we can help people address the needs that they have, of both themselves and their children, so that they get the access quickly, expeditiously and without a high cost and without pain and suffering and everything else. I am saying if we are in a position to come back and know that this kind of implementation is going to work, I would feel good to know that we had a chance to have an ongoing review of it.

None the less, we are faced with definitions. We are faced with the way in which the legislation is going to look at each situation. I have to say that we are leaving so much up to the courts, which again is tragic that we have to rely on the courts more and more. That seems to be part of the age in which we are living, where the courts—you refer to them, but they will get a decision now in 10 days rather than longer. I am going to be talking about specific subsections within section 6 that leave me worried. None the less, I think overall I support the intent behind that section, but I have grave concerns on just how well it is going to be implemented.

The Chairman: Any other discussion from other members on section 6 overview? Subsection 35a(1), Mr Offer?

Mr Offer: Very briefly, subsection 35a(1) is basically the new remedy for an noncustodial parent who is entitled to specific access to return to the court that made the order and ask for assistance. That is the introduction to the rest of the subsections that follow within the section that we are dealing with.

Mr R. F. Johnston: Our party is in opposition to this new direction for legislative remedy to the problems that denial of access have caused. We think that it is a wrong notion and we agree with those many groups that came before us that also thought taking the court remedy solution here was not the way to go at this stage. For families which have enormous problems, some of which have already been exacerbated by the confrontation approach of the courts, to send them back and to give this kind of "relief" to them may be nothing more than prolonging and adding to the hostilities that exist and may hurt the child.

I also would just say that in this section, like in so many other sections, the concepts of who can initiate action are once again limited to the person who is denied the access. Later as we go through this, the child involved in this, who may not like what is happening in access one way or the other, has no role under this new section on court remedy. If this remedy is good enough for one of the parents who thinks that access, for one reason or another, needs to be reviewed, then why is it not also legitimate, with certain constraints and compatible with other legislation that we have, that the child also has some rights to initiate his concerns as well? Again, I find that this whole area is not well thought out and is wrongheaded.

The Chairman: Are you ready for the vote then on subsection 35a(1)?  
No?

Mrs Cunningham: Are we still speaking on section 35a?

The Chairman: All of section 6 is section 35a. We are speaking



specifically to subsection 35a(1). Did you have comments on subsection 35a(1)?

Mrs Cunningham: I think that subsection 35a(1) is probably the part of this whole amendment that was spoken against the most. It is probably the one that people singled out as being an enforcement or right-of-access amendment that we heard from the public saying that it was totally unacceptable to them. So we would like to certainly put on the record our opposition to subsection 35a(1).

The Chairman: Shall subsection 35a(1) carry? All those in favour? Opposed? Carried.

Subsection 35a(2), Mr Offer?

Mr Offer: Under subsection 35a(1), basically, of course, what we have done is allow an individual to go to a court to ask for an order and for assistance. In subsection 35a(2) what we are doing is outlining what it is that the court may order when an individual entitled to access has come before it. Basically, this subsection, as I have indicated earlier, centralizes four potential orders in the instance of access denial. Three of the orders are already available in the system, those being: first, the compensatory access possibility; second, the possibility with respect to supervision; and third, the possibility with respect to the appointment of a mediator. The fourth potential order dealing with the reimbursement of reasonable expenses is one that is new.

1650

If I might, I would like to deal with those four potential orders in some detail. First, dealing with (a) and compensatory access, compensatory access, as you will know, is sometimes called make-up time and is available in a limited form in the existing system. It is not specifically referred to in the Children's Law Reform Act but has been used to permit individuals to what is called "purge" or avoid a finding of contempt. Purging a contempt is really the possibility of avoiding a fine or imprisonment. The court would say essentially that the custodial parent will not be punished if she consents to makeup time. This proposed amendment will make such an order more readily available, first, and second, the parties will not have to go through contempt proceedings.

The second potential order deals with the possibility of supervision. Currently, as we know, and we have had some discussion on this, section 35 provides that the court may give directions for supervision of custody or access by person, children's aid society or other body. This was designed to allow a neutral third party to assist hostile parents to exchange the child either in an atmosphere that was controlled or did not require contact between them. What we are doing in clause 35a(2)(b) is again allowing a court to make that ruling if it is so deemed by the court to make that ruling.

The third potential order is the new order. It is a new provision because the existing law only permits a successful party to ask for reimbursement of legal costs which are incurred. I would think that this is rarely, if ever, ordered.

However, parents wrongfully denied access frequently will incur expenses in their attempt to visit. If access is wrongfully denied, the parent is not able to recoup those expenses in the current system and this amendment will permit the reimbursement of reasonable expenses actually incurred.

In dealing with the fourth matter, it is again the opportunity, the availability by a judge to appoint a mediator in accordance with section 31. I guess we have had some detailed discussion on the whole question of mediation, because as we know, mediation in family law is available under the current law provided both parties consent. This amendment would encourage the use of mediation on consent to resolve the underlying dispute.

Basically, with respect to subsection 35a(2) we are outlining the four potential orders that can be made in dealing with a denial of access. To reiterate, three of those orders are basically in the system now. The fourth, dealing with reasonable expenses actually incurred, is new and we feel that these are proper orders for a judge to contemplate in dealing with the matter at hand.

The Chairman: Thank you very much. Other discussion?

Mr R. F. Johnston: If one is to go down the road of court ordering and court process, then yes, judges have to be given leeway in terms of the remedies they may try to develop, and therefore I understand why four options are made available which give some latitude to a judge making what are always some of the most difficult decisions that any person on the bench has to try to divine.

I just want to say that I have some difficulties with two of the notions that are here. I do not have a problem with the compensatory decision; that makes perfect sense in my view. It would hopefully be one of the easiest of the remedies that would be available if the parties were amenable. Given who these parties are likely to be, I think that is highly improbable and therefore it is going to be something which is imposed against the will of some people. It will be interesting to see how it is complied with and whether or not, then, the contempt approach—the final remedy there presently is—will be the final remedy for this particular percentage of groups anyway.

I think clause 35a(2)(b) requiring supervised access is, in the present context of the lack of services available, an archaic, arcane notion, almost a kind of Conservative concept—if I might give you Liberals the ultimate insult. You offer some kind of supervised access without having any kind of notion of what standards for supervised access you want in the province, any kind of notion of how effective some of the experiments that have been undertaken are, why they should have been continued and why they should form the base of the support service—not an ordered service but a support service—to people who are having real difficulty dealing with each other and are using children as victims after separation or divorce.

To have supervised access in this area when we know that in some cases, as we heard with witnesses, that is taking place in the most inappropriate of circumstances because of a lack of available facilities, when a government cannot make up its mind about which ministry should handle these things or even what the standard should be, is a very old fashioned and Conservative kind of concept. That is, set up the idea and then do not put in the kind of modern social service that should be there to assist these people and specifically the children, in this case.

In the case of clause 35a(2)(c), which is the reimbursement of reasonable expenses other than the legal costs that would be involved: I remember one of the women's groups that came before us raising a concern which I think all members should be alerted to. That is, often the woman in a separation is economically in an inferior position to the husband. If you have

the kind of bad blood that is often underlying the access difficulties of this small group of couples in the province, it is quite possible that you might get somebody with some resources, with good lawyers moving access denial motions in a consistent and harassing fashion, against somebody who cannot afford good counsel and who then is ending up having possibly to pay reasonable expenses of the other person who has more money and who is actually using the whole process just to get at that other spouse.

One would hope that a judge could see through that and that the judge would make a proper determination and would not victimize the woman. I regretfully say that in my view the judiciary in this province has not proved itself on a regular basis to be particularly sensitive to the needs of women in the courts. I worry about that as a new initiative that is being put forward, and I worry about how it might be abused, given the nature of the people we have before us.

In terms of the mediation, I have already made comments about my concerns about the lack of standards in mediation right now and the reliance on that kind of process, but as one of the four options that a judge would have, I have no complaint with that.

The Chairman: Any further comments on subsection 35a(2)?

Mr Cousens: I have a number of concerns here. There may be answers that will satisfy my concerns. There are four aspects here that will help resolve the access through makeup time, supervision, reimbursement of the party or a mediator. I wonder how consistent the reimbursement under clause 35a(2)(c), "require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access," is with section 39 of the act.

1700

Could the parliamentary assistant or his legal counsel tie in this section with section 39 of the act, where it says:

"In addition to its powers in respect of contempt, every provincial court...may punish by fine or imprisonment, or both, any wilful contempt of or resistance to its process or orders in respect of custody of or access to a child, but the fine shall not in any case exceed \$1,000 nor shall imprisonment exceed 90 days."

Then it goes on for imprisonment. Is there any tie-in of this, that the courts could be using either section 39 or clause 35a(2)(c)?

Mr Offer: I guess the question you raise is under section 39, which is a contempt proceeding, which permits a court, after hearing a contempt order, to issue a fine not in excess of \$1,000 or imprisonment of not greater than 90 days. If that is permitted under section 39, then I understand your question to be, "How does that sort of meld with this particular section?" I think the short answer to your question is that the fine under section 39 is in fact a fine, an amount that is ordered by a court to be paid to the state, as opposed to the individual.

What we are dealing with in clause 35a(2)(c) is reasonable expenses actually incurred by one of the individuals to the order. What we are doing through this new remedy, and this is the new remedy under this section, is allowing a court to say that where it feels the circumstances merit, it has

the ability to order one of the individuals to the order to pay to the other individual the reasonable expenses actually incurred. I think in principle the two sections are very different. One is a payment by fine by an individual to the state; the other is a payment at the discretion of the court, where circumstances merit, by one individual to another for expenses that have actually been incurred.

Mr Cousens: I saw it a little differently, but I appreciate the way you have tried to explain it. As I see the new remedies in the bill we are considering, they are generally created because the courts were reluctant under the old law to order the custodial parent to pay a fine or go to jail. I think there was heavy reluctance on the part of the courts to doing that.

Mr Offer: Your characterization is essentially correct, that the contempt of order proceedings are ones that took a great deal of time. It was widely known that they were not going to result in imprisonment.

Mr Cousens: What I am concerned with is that the new amendments to the bill ignore the power given to the court under subsection 39(2) to make conditions such as makeup time that the custodial parent must meet or end up in jail. I am wondering how consistent the new sections are with the old and why they did not clean up the old ones.

Mr Offer: The question to ask is the whole essence for the amendments. What we wanted was the ability, for one individual who has been denied access, to be able to go to court to ask for an order that could actually be enforced, as opposed to having to rely solely on section 39, the contempt order, which in the main was known not to result in an order, for instance for imprisonment or a fine. What we wanted were reasonable types of orders to be available to judges as the circumstances merit. We feel very much that the mere fact that there are these types of orders available will result in more of the access orders not being denied.

Mr Cousens: One of the real lapses of the Ministry of the Attorney General is the failure to have done any statistical analysis on what really was going on in the system. Have you any feeling of the number of people who have had to go to jail because of section 39? How often is it used or what is the extent of it?

Mr Offer: In terms of how many people have actually gone to jail in terms of contempt on the basis of access, I have been advised by ministry officials that we have not been able to uncover a single instance of that ever happening. That is dealing with access denial.

In terms of the statistical basis upon which this legislation is founded, I think we have been up front and clear from day one that this legislation is not the result of statistical analysis, but rather information received by the ministry in terms of difficulties in the enforcement of access orders.

Mr Cousens: I see an element of progress in the remedies that have been suggested that we are considering now, and yet in a moment I am going to be critical of another one of them.

Mr Offer: I sort of had a feeling that was coming.

Mr Cousens: None the less, why could you come along now and bring in



these steps and yet not clear up section 39 and remove these other punitive methods that are there?

Mr Offer: Basically, we are not moving to take away section 39. It is just going to be a remedy in what might be called a remedy of last resort, but what we have now through these amendments are realistic, reasonable types of orders that a judge can now make which we feel will result in orders for access not being denied.

Mr Cousens: I have made my point. I do not have anything else to add on that.

The other thought I have is the whole business of the reimbursement that comes into it. Once you have put it in the law and you say you are going to have reimbursement, there can be economic penalties like the payment of expenses that can become highly punitive in that process, especially for people on reduced incomes or social assistance after their separations. I think there can be very heavy costs associated with that.

I know that for anyone who has been involved in not permitting an access, there has to be some way of coming back on it, but in orders for supervised access, I guess, to me—I want to come back to my point—if there is going to be an economic penalty, are you aware of just how much that could be? Should there be a limit on it? Is there some way in which there can be some balance to what is going on here? I am concerned about it. I just want to see if you have thought about it at all.

Mr Offer: Basically, I guess the point you raise is why the section is styled the way it is. It is, first, "reasonable expenses"; second, it is those that have been "actually incurred"; third, in what cannot be forgotten for an instant, it is at the discretion of the judge in making the order in dealing with the parties and the possibility of that particular order in those particular circumstances.

1710

Mr Cousens: To make my one final point, and that is the supervised access, you bring it out as an appropriate way of giving relief in clause (b), "require supervision as described in section 35." I had amendments that hopefully would have expanded on supervision of custody or access. I just find that there are very few supervised access centres here in the province. If the province intends to enshrine supervised access further in the legislation, adequate facilities should be provided. I do not see a follow-through on that. Could you elaborate on what is going to be done to provide such facilities.

Mr Offer: In response to your question, I guess much of that has already been indicated in terms of your amendment. As I have indicated earlier, there has been a pilot project at Lutherwood. That pilot project has now been completed. The information is currently with the Ministry of Community and Social Services in its evaluation. As I indicated earlier, that is where we stand in terms of supervised access at this particular point in time.

Mr Cousens: I am just going to say that it is very loose. I continue to be more worried about the future of what is going to happen. Your answers are inadequate to satisfy the concerns I have on this section, so I will vote

against it. I think you are seeing a continuation of problems. I guess, doggone it, I hate to be agreeing with Richard Johnston.

Mr R. F. Johnston: It hurts me, too, Don.

Mr Cousens: When you start realizing the concerns the New Democratic Party had, I am still sitting here seeing that we have not come through with any substantive amendments to try to improve the bill. The government continues to stay with its program, inadequate as it is.

It has no real desire—maybe it has a desire. You might personally, but I do not see the government you have been elected to help in some way reacting to provide supervised access. I have not seen you move in any way to help with mediation beyond—you know, I had a whole series of amendments on that, all of which were thrown out and voted down. I see this bill again tying into other parts of the bill.

I will tell you that when you start coming down to clause 35a(2)(c) and section 39, the government is saying it does not know of anyone who has been sent to jail. With respect to some of these other punitive methods that are available under the old part of the bill, you have not even gone back to them, and you say it is a case of last resort.

I do not know whether you have really thought this through as much as you should have before you brought it forward into the Legislature, obviously without any willingness to change, modify, amend or improve it. It leaves me even less happy than I was when I started this afternoon, especially after I saw what the government was doing with the way the House was being ordered around, but that has nothing to do with you. I am just getting sicker as I get to see the way it is going.

Mr R. F. Johnston: I have a question of the parliamentary assistant. He said something I did not think was fact and I just wanted to check because it may need more recent information. My information is that the Lutherwood project is over and that the Ministry of Community and Social Services does not feel it needs to evaluate that project because it does not feel it is an appropriate project for the Ministry of Community and Social Services to be undertaking.

That was the information I had, and you made it sound as if there is an evaluation taking place of that project. My information is that they have decided there was no point in evaluating it because they do not believe providing that kind of supervised access is a Community and Social Services responsibility.

Mr Offer: I would just respond as I did earlier, that the Lutherwood project was in fact a pilot project, that it is completed at this particular point in time, and according to the information we have received, that evaluation as to what went on throughout the project period is currently being looked at by the Ministry of Community and Social Services.

Mr R. F. Johnston: We will have to wait to see who is right.

The Chairman: Are we ready for the vote on subsection 35a(2)? All those in favour? Opposed? Carried. On subsection 35a(3), Mr Offer?

Mr Offer: Just give me one moment here. Subsection 3 basically states that if there is an order of compensatory access made by the court, the

amount of compensatory access shall not be longer than the period of access that was wrongfully denied. Basically, we proposed this particular limitation because if the time is to be truly compensatory, there ought not to be orders made in excess of the time that was initially denied. Anything in addition to what was initially denied might be viewed as being punitive, and that is not the intent of this subsection.

The Chairman: Any comments on subsection 3? Shall subsection 3 carry? Carried. Subsection 35a(4)?

Mr Offer: Subsection 4 basically states, "A denial of access is wrongful unless it is justified by a legitimate reason such as," and what follow are eight possible legitimate reasons. There is no question the court will need some guidance in determining when a denial of access is unjustified.

I think it is important to make this comment in that these eight examples of what may be deemed valid reasons are not all inclusive and provide only examples that have been commonly heard in such disputes. It has not been the intent throughout that these are the only legitimate reasons for denial, but rather these are the ones that are most commonly heard.

I imagine what I should be doing at this point in time is going through the eight potential reasons. Basically, the first states there were "reasonable grounds that the child might suffer physical or emotional harm." Second, there are reasonable grounds that the person might suffer physical harm if the right of access were exercised. These first two reasons are designed to offer protection to parents who might suffer abuse when access is exercised. If either the parent or child might meet with harm, then access could be denied.

The third reason states, "The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access." This acknowledges that a custodial parent would be justified in refusing to let a child leave with an impaired access parent.

The fourth reason states, "The moving party"—who is the access party—"failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties." This is a grace period. It is an important point, because right now there is no such grace period.

The fifth point indicates, "The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised." This basically entitles the custodial parent to deny access if the child was too ill to leave to spend time with the other parent.

1720

The sixth reason as indicated states that "the moving party"—the access party—"did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access." Basically, in some instances there are agreements found within an agreement or an order dealing with access, and this states that where there are those conditions attached to an access order, that access would not take place if certain things did or did not happen. Then this is going to be a legitimate reason for denial of access.

The seventh reason states, "On numerous occasions during the preceding

year"—the party who has the right of access—"had, without reasonable notice and excuse, failed to exercise the right of access." Basically, this will enable a custodial parent to deny access to an access parent who has not been exercising the entitlement to access over the last year. If a parent unexpectedly arrives to have access, then the custodial parent would be able to deny access if it were inconvenient for the child.

The last reason—but again I stress that these are not all-inclusive; they are just examples of the most commonly heard reasons for denial—is that "the moving party"—the access party—"had informed the responding party"—the custodial party—"that he or she would not seek to exercise the right of access on the occasion"—and premise—"in question." Basically, this simply avoids a situation where an access parent who has informed the custodial parent of an inability to exercise access arrives and demands access. This unexpected arrival will be a legitimate reason for the denial of access.

These are eight of the reasons contained within the legislation but again I stress that they are not meant to be all-inclusive but rather, once more, the most common types of reasons that occur in terms of denial of access. Those are my comments dealing with subsection 35a(4).

The Chairman: Do any members of the committee wish to comment?

Mr Campbell: I just want a clarification of the term "moving party" as it relates to this section of the act, so it is clear in my mind. Then I have a second one after that. I realize it is a legal term. I just want to be clear in my head which side we are on here.

Mr Offer: Basically, the moving party is the party that has the right of access.

Mr Campbell: All right, so it is the party who has the right of access to the child?

Mr Offer: Yes, not the custodial party.

Mr Campbell: Okay, that clarifies it. The other question I had was this. When you say "the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised," if the scenario developed that the child had appendicitis and was in hospital, would it be the circumstance or would it be perhaps an emotional situation which might prevent the access? If the child is in the hospital, I can understand, for example, that the access could be in the hospital area. Maybe that parent would want to be there to try to help support the child. I just want a clarification on how you see that happening.

Mr Offer: To respond to your question in terms of the illness of a child, it is not anticipated that the only reason should be when a child is hospitalized and medical evidence is not going to be required. There is going to have to be some parental judgement taken into consideration, but it is not mandatory that the child be hospitalized before the custodial parent can legitimately deny access to his or her child.

The second part of your question deals with the emotional harm to the child. I think that particular reason would be founded within the first legitimate reason indicated in the section where it states that "the responding party"—the custodial party—"believed on reasonable grounds" that the child might suffer physical or emotional harm if the right of access were



exercised. In terms of your question, I think that would bring into account two possible and legitimate reasons for denial.

Mr Campbell: Then following from that, it would have to be a reasonable belief that the parent has acted reasonably and was not using what might be considered a minor illness, like a minor cold or something like that, to continually deny this happening.

Mr Offer: In fact, that would be one of the considerations that would be taken into account in dealing with a motion based on a wrongful denial of access. So that is in fact one of the issues that would have to be discussed.

Mr R. F. Johnston: I think this is one of the most wrongheaded approaches to legislative remedy that I have come across in a long time for a number of reasons, such as the language that is used, the standard-of-proof questions which are being begged by this, the fact that it looks to me as if this is, given who we are dealing with, a shopping list for vexatious or mischievous harassment of somebody who is being denied access. If you think of who the players are here and how this can be manipulated, it is going to cause havoc in the court.

Under other legislation around a child in need of protection, for instance, this kind of elaboration is never attempted. When you talk about a child who is being neglected or who is in serious risk of emotional harm, these kinds of things we are trying to lay out, the actual time when something might take place and that kind of thing, are not attempted in legislation.

In my view, it is one of the reasons why the courts are going to get trammelled up in this stuff really badly. Judges are going to have to keep trying to determine whether or not this is a vexatious attempt to undermine access or whether this person is really reading this thing on his or her best judgement and thought that the child was sick and therefore should not be seen. Somebody came before us and said that to deny a parent access to a child because the child is sick could be one of the most cruel things to do to both the child and the access parent, exactly when the child needs the help. But as has been mumbled here by legislative counsel, that is not what it says.

In point of fact it says that the judgement about that decision is left to the custodial parent and then the burden of proof is vague. I do not know where the burden of proof lies here and I think that the legal questions that come out of this in terms of good lawyers going into court on this stuff are enormous. I remind you that our language about "emotional harm" in the Child and Family Services Act talks about "substantial risk" whenever we deal with the notion of emotional harm, because of the problems of definition which we have known within that legislation for years around the concept of emotional harm—language which in fact was left out of the old Child Welfare Act and which we struggled over for two years and then it went into the Child and Family Services Act. The language that is used here I think is quite dangerous.

The one-hour leeway is just setting up a target for somebody to use. Speaking of somebody who has access four hours away from here in Toronto, it is quite conceivable that you could end up with an hour-and-a-half delay. If you were in a situation where you had the kind of long-aggrieved relationship between the spouses that we have been hearing about from people, that could easily be used as a really neat tactic for leaving somebody out.

Paragraph 8 says, "The moving party had informed the responding party

that he or she would not seek to exercise the right of access on the occasion in question." How? In writing? Whose word is the judge going to be able to take on this in terms of who was advised when? Putting this stuff down in writing in legislation in my view is an incredibly dangerous thing to do. I think what you have developed here is a shopping list for people to abuse the system with and challenge the patience and the judgement of judges on a continuing kind of basis and I think that that is a mistake.

I do not approve of the process you are taking but, again, is it not interesting that there is nothing in here about denial of access being an okay kind of thing, depending on the child's wishes? Is it not fascinating that you can come up with a list of eight points here, but there is nothing in this which talks about whether a 14-year-old child's wishes should be taken into account on this. Again, I say this is badly thought out legislation, which is going to cause more trouble than it is worth.

1730

Mr Cousens: I just see more problems coming through in this legislation. The burden of proof that falls upon the complainant to come along and find whatever rationale in an oral presentation 10 days after it happened, if they can ever get to court, is going to be a real miracle, and especially if they are lucky enough to have legal counsel, legal aid or someone there to assist them. Then, to have the burden of proof upon them to say, "Okay, there was impairment by the other party," to prove that they were drunk or to prove anything else, is really going to be a tough thing for them to fulfil.

I also have grave problems with what is going to happen with the courts. Suddenly you have given them eight reasons—and I appreciated what the parliamentary assistant to the Attorney General said as well: They are not the only reasons. We have begun the eight by suggesting "such as one of the following," so if there are other mitigating factors that come up that the dreamers in the Attorney General's department did not think of that become an excuse or a legitimate reason, then they could be used as legitimate.

I have to say that there is a certain thing that happens when you have got a judge sitting up there on his seat looking down on a case. It is going to be far easier for him to look no farther than the eight reasons that are given. I think it is dangerous to provide judges with lists in legislation, since it makes it so easy for them not to go beyond those printed words. I think that is a very interesting situation that you are creating.

The Chairman: Mr Cousens moves that subsection 35a(4) be amended by deleting the words following "legitimate reason," including "such as one of the following," right through to the end of clause 35a(4)8, ending with the words "occasion in question."

Mr Daigeler: You mean you want to remove subsection 35a(4)?

Mr Cousens: No. Subsection 35a(4) would then read: "A denial of access is wrongful unless it is justified by a legitimate reason." I see problems with having a list that is incomplete when the judges will be looking to it. I think I have spoken to it earlier in my other remarks.

The Chairman: Discussion on the amendment?

Mr Offer: I have listened closely to what the member has indicated and certainly to what his amendment is. I must say that I will be voting

against that particular amendment. I will be voting against it because we believe that this particular subsection provides some needed guidance in determining when a denial of access was unjustified.

As I have indicated earlier, the eight reasons so indicated are not meant to be an all-inclusive type of list but rather only examples of the most commonly heard legitimate reasons for the denial of access. We believe it is extremely necessary that those remain within this legislation.

The Chairman: Is there further discussion on the amendment, which is to delete everything after the word "reason" so that subsection 35a(4) would read, "A denial of access is wrongful unless it is justified by a legitimate reason"?

Shall the amendment carry? All those in favour? All those opposed?

Motion negatived.

The Chairman: Further discussion on subsection 35a(4)?

Ms Poole: I just wanted to highlight the importance, in my mind at least, of paragraph 35a(4)7. I know Mr Johnston referred to it as a sop to the women's group but I am afraid I must disagree very strongly with that. I would not want to minimize for a moment the very real problems that are faced by a custodial parent when an access parent consistently does not show up for visits. It is incredibly disappointing for the child and I think it is very important to have this consideration in there.

Mr R. F. Johnston: Let's just deal with what paragraph 7 is all about, because I was actually talking more about the next subsection, 35a(5), but that is beside the point.

This section is saying that is it right for a person to deny access to a person who has not been using his or her access rights so that the child who has been harmed, in theory or in fact, by the lack of use of the access will now be assisted by the person denying access to the person who is finally going to ask to try to be brought in to use the access. Excuse me, but again that is just a recipe for abuse, having that as part of your list. Again, given who the players are here, it is an incredibly dangerous thing to do.

I do not doubt for a second that there are men, in this case, who do not use their access appropriately and that hurts children very badly. I do not see denying access on an occasion when they are trying to use it as a very helpful remedy to write into law and to place there as an armament for somebody who is feeling aggrieved by that having taken place for some time. I think there are much better ways of going back to the courts, if you have to use that route, on the basis that there has been a substantial change, that this person has never used his access over a period of a year.

It seems to me that of all these, compared with all the others, this is something which is habitual that is being talked about here. It is something which is a changing circumstance of what the access order was all about, which has been abused over a long period of time. For that reason, it does not fit with the other things that are here. It is not the one occasion where the person now needs to get compensation. It is, in fact, something which is a just cause, it seems to me, for somebody going back and saying: "Look, judge, that was a good access order you got. But this guy's never used it for a year and a half and these kids are being hurt by the expectation of his coming and



he's never coming." This is not the place for that. Again, it is just badly written and badly thought out, even if you try to deal with the problem you are talking about.

The Chairman: Is there further discussion of subsection 35a(4)? Are you ready for the question? Shall subsection 35a(4) carry?

All those in favour? Opposed? Carried.

Any discussion on subsection 5?

Mr Offer: With your indulgence, I would like to discuss subsections 5 and 6 at the same time, because subsection 5 is a new remedy to address the problem of access parents who do not visit when they are supposed to visit.

It proposes that a custodial parent may ask the court for one or more of three orders if the access parent does not arrive for access, does not have a reasonable excuse and did not give reasonable notice. This is very much in keeping with the foundation laid in terms of section 1 of the bill, which we had some thorough discussion on. That is what subsection 5 is about.

I ask for your indulgence to deal with subsection 6 because the types of orders that may be issued by the court are very much similar to that which was in the preceding couple of clauses, (b) supervision, (c) the reimbursement of reasonable expenses actually incurred and (d) the appointment of a mediator. So the three orders available in this case are very much the same as the orders available under subsection 35(a)(2). By way of comment, that is what I have to say with respect to subsections 5 and 6.

Mr R. F. Johnston: Again, there is my theme of the wrongheadedness of this legislation. I understand what is being attempted here and I worry about just how all the reasonablenesses that are written into this are going to be interpreted in the court when you are dealing with people who have probably been unreasonable with each other for a long period of time.

I think it is highly problematic. I also think that, conceptually, bringing in this kind of a section and having the shopping list above in the previous section which you have just passed leaves a real disequilibrium, if I can put it that way, in the law. What about the other side of all of this, if you are going to do the shopping list kind of approach to things? What about the father who has had the child away from the custodial parent and for what that person considers are legitimate reasons does not want to take the child back? What about the burden of proofs? What about the list of considerations about when that is a viable thing to do?

1740

As some father said before us, when the custodial mother seemed to be under the effect of drugs when he picked up the child, or he has learned that that is the habitual situation there and he is worried about taking the child back, or he learns the child has been abused, why is there not a list there for that remedy if we like this notion of lists and justifications?

Instead all we have is that if this guy is not using his access right or he is not returning the child appropriately, then rights are in the hands of the custodial person to go the court. But there is nothing in this section to assist the person on the other side who feels that he is not getting his due in all of this. I do not find the legislation equal in its weight and I would



not find either approach effective. Again, I think this bill is a back-to-the-drawing-board bill. It really is.

The Chairman: Shall subsection 35a(5) carry? Carried. Shall subsection 35a(6) carry? Carried. Subsection 35a(7).

Mr Offer: Subsections 35a(7), (8), (9) and (10) really do deal with the same type of time period under this legislation. I would like to, if I might, deal with those four subsections at once.

In dealing with subsection 35a(7), access is often specified on a regular periodic basis, as we are aware. In fact, under this legislation there is a procedure by which to make what is deemed reasonable access into specific access. This section is based on the premise that if the court is to be able to use compensatory access in a meaningful way, then it will need to move quickly. If the hearing is delayed, further access denials may accumulate, making the use of compensatory access physically impossible. We believe that subsection 35a(7), in terms of a motion being heard within 10 days, is a requirement that will prevent this situation from arising.

Subsection 35a(8) talks about motions not being able to be made—it is a time limitation—more than 30 days after the alleged wrongful denial or failure. This particular subsection says that if access parents wait more than 30 days to seek enforcement, the number of denials that might accumulate may be unwieldy. We believe that after 30 days the ability to enforce the access order should be lost, and that is why we have that time limitation indicated.

Subsection 35a(9)—we heard a great deal of information on this—talks about, "The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit." In response, most motions rely on sworn statements from the parties to place evidence before the court. We believe that the use of those statements can result in a delay, in adjournments, cross-examinations and transcripts—in essence, in further delay and expense to the parties. This section proposes oral evidence unless the court orders otherwise. We believe this is in keeping with an enforceable remedy that can be ordered in an expeditious way.

In addition, any oral evidence must be confined to the problem at hand, such as, of course, the denial of access or the failure to exercise access, and reasons.

We very much believe that, though it is within the discretion of the judge, upon application, whether to give leave to file an affidavit, in the first instance there should be that particular procedure deemed without affidavit but rather on oral evidence.

I seem to have slipped into subsection 10 as I was discussing it. Once more, at the hearing of the motion, evidence will be admitted only if it is directly related to the alleged wrongful denial of access or the responding party's reasons for the denial or failure.

These subsections, 7, 8, 9 and 10, taken as a whole, are designed to allow for an expeditious manner of dealing with the matter at hand. We believe that they are workable, that there is evidence currently of lawyers, for instance, being able to go before the courts on very short notice and courts being able to hear matters on very short notice, and that this is in keeping with a crucial question, a crucial issue which must be resolved at the very first moment. That is what these particular subsections are designed to accomplish.

Mr R. F. Johnston: I think this is one of the more impractical sections of this law and the most damaging, perhaps, to the question of the civil rights of adequate due process.

The government is trying to have it two ways. At the moment, you can get before the courts if you have a real emergency. That is the way it is based at the moment. Now we are talking about the possibility of having what I would consider, because of the list that we talked about prior to this, people coming before the courts for frivolous or mischievous reasons and the quickest time you can possibly do it earmarked under legislation to allow people to do that. I just question whether that is the best way to go in this.

As people come before us, I worry about people with languages other than English as their first language trying to respond to an action that is initiated this quickly, getting proper legal advice before they go into court to be prepared for the kind of thing that is going to take place and the kind of limitation that is going to take place for those people and for people who are in violent situations or who believe themselves to be in violent situations when they are asked to give oral evidence and not have affidavit evidence in this section.

The courts are backed up now. In the fights there are going to be before the courts in definition when you get to 10(a), that the only thing you are going to hear is, for example, "the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires," you are going to get, on the one side, somebody trying to limit that to a very precise discussion of what happened at the moment and somebody else saying: "Yes, but you have to understand the context this fits in. This is why this took place." Those kinds of battles are going to take an awful long time before the courts. They are inevitably going to be rehashing the same kind of stuff they went through in the initial access order and this is just not going to work.

Again, I think there is the danger here not only of its not working but of people's civil liberties and their rights to due process being affected by this, because people who do not have much money, whose language is other than English, getting a notice and being before a court within 10 days to give oral evidence—I think there are some real questions about whether that provides people with real natural justice or not.

Mr Cousens: This procedure of enforcing an access order and ensuring that an access parent will have a court hearing in 10 days is something that has no other precedent in family law in which a hearing is required in that period of time. Apart from the impossible scheduling difficulties for the courts, with already overcrowded case loads, I can predict that people who are going into court unrepresented, if their lawyers are unavailable or if they have to retain a lawyer through the legal aid system with its notorious delays, are going to have a terrible time.

It will also place people telling their stories in a public courtroom in front of their former partners and causing, I think, just extra stress in the whole situation. I think it can be traumatic. I just wonder why there should be such unusual procedures for access enforcement when, for example, support enforcement can take many weeks to get into court, even with the government's new enforcement program. Could you answer that question?

The Chairman: Mr Offer, a question was posed.

Mr Cousens: I will repeat the question in case you did not get it.

Mr Offer: No, I was listening closely to what you were saying. Why there should be this type of procedure for this type of matter? Because there has been a court order.

Mr Cousens: And tie it into the other part.

Mr Offer: There has been an order made by a court dealing with a custody matter where custody has been awarded to one and access to the other, there has been some problem in complying with that order and while there has been this problem the right of access has been denied. We think it is absolutely crucial that in dealing with this particular emotional matter it get before a court as quickly, as expeditiously and as effectively as possible in order to make certain that the order issued by the court is able to be carried out. That is an order made in the best interests of the child and we feel it is absolutely essential that such an order be carried out and enforced.

Mr Cousens: Why should support enforcement not take the same length of time?

Mr Offer: Support enforcement has within itself a whole new system under the Support and Custody Orders Enforcement Act, the acronym being SCOE. That has gone an awful long way to send out a message that when a court makes an order based on support, the person who has been ordered to make that support payment take that order very seriously. That is the whole essence of the SCOE system. That is why it has been so successful.

The message we are trying to send out through that system is that those who have been ordered to make a support payment look upon that support payment and that order as just as important as their monthly Visa bills. We want to make certain that those support orders are complied with. We want to also make certain, through this particular legislation, that the custody and access orders are complied with. That is the requirement and that is a necessity for these particular time parameters.

Mr Cousens: Let the record show that one is going to take an awful lot longer than 10 days, and that is still the case.

Mr Offer: I understand and have listened very intently to your concern. We have discussed it with ministry officials, with courts facilities branches. We believe, and this legislation is founded upon the fact, that this is workable.

Mr Cousens: What percentage of cases will be heard within 10 days?

Mr Offer: I cannot give you a percentage of cases when one does not know what the percentage is going to be in terms of access denials.

Mr Cousens: Yes, but you did not say 100 per cent. Therefore, you are putting in a law that you almost know is not going to work. Come on, what percentage? Are they all going to be within 10 days? The answer is no.

Mr Offer: I think what you are doing is you are reading into it somewhat incorrectly.

Interjection.

Mr Offer: I would not have said "negative"; I said "incorrectly," because when there is an access denial there is some discussion which takes place between the parties and/or their solicitors which might not result in a motion being made under this particular legislation. As such, I think that particular question is sort of based on a faulty premise.

Mr Cousens: No, it is not, but let's get to the vote.

Mr Campbell: I have a short comment on the English and French language. I think Mr Johnston, when he mentioned English, was really saying the two official languages. When he said "other than English" he meant other than English and French. I want to clarify that there are a number of programs by the Ministry of the Attorney General for the French language. I know that is what he was referring to.

The Chairman: Shall subsections 35a(7) through (10), inclusive, carry?

All those in favour? Opposed? Carried.

Mr Offer: Briefly, I would like to discuss subsections 35a(11) and 35a(12) together, as they are related.

A separation agreement may be filed with the court under subsection 35a(11), as is allowed under the Support and Custody Orders Enforcement Act at this particular point in time. Second, under section 35a(12), once filing has taken place, the access provisions can be enforced as if they were an order of the court.

The Chairman: Shall subsections 35a(11) and 35a(12) carry? Carried.

Mr Offer: Subsection 35a(13) is, I think, a matter which Mr Johnston did raise in dealing with other matters in the bill in terms of the potential for a frivolous and vexatious application. Subsection 35a(13) is designed to come to grips with the possibility that, given the frequency with which access may be exercised, repeated use or abuse of the remedies could be considered inappropriate. This subsection is designed to give the court the power to prohibit the use of the remedy in bad faith.

Mr R. F. Johnston: I understand the intention of it. I think this is not a solution to the problem, even by the wording of it: the recognition that any court is going to have to really seriously consider another approach, even if it thinks the first one was frivolous, just because of the seriousness of the issues at hand. It does not really deal with the issue, in my view, especially with the nuance that is going to be involved. But I understand the intent.

The Chairman: Shall subsection 35a(13) carry? Carried. Shall subsection 35a(14) carry? Carried. Shall subsection 35a(15) carry? Carried.

Section 6 agreed to.

Section 7:

Mr R. F. Johnston: Can you just remind me of the change? I did remember it but I have forgotten it now. There is only a very minor change, as I recall.



Interjection.

Mr R. F. Johnston: Yes, the communicating with, that is fine.

Mr Offer: I was just about to say that.

Section 7 agreed to.

Section 8 agreed to.

Section 9:

Mr R. F. Johnston: I want to have a short debate of that. I wish I believed this was really a children's law, but as I said in the past, there is so little in it about children and their rights that I do not really believe this is a children's law reform at all.

Section 9 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

#### ORGANIZATION

The Chairman: Members of the committee, we have a few minutes left. I thank the members of the committee for their co-operation this afternoon. We have a few minutes left to order our business for next week. I would bring to the attention of the committee the fact that Bill 5 has been referred to this committee and I would seek some guidance from the committee with respect to how we might handle Bill 5.

Mr R. F. Johnston: We did move a motion dispensing with the normal time that is taken to refer things out to committee. I would like to see us try to get started as of next Tuesday by contacting groups and inviting them to come forward on the heritage-language issue that is Bill 5.

We had agreed, I think, tacitly between the parties that we would try to limit this to a couple of days of public hearings and then have whatever clause-by-clause debate. Since there is one clause, it should not take an awfully long time—perhaps a week or three, I said facetiously. I would suggest that I would be happy, from my perspective, to give the clerk tomorrow a list of names of groups I know are interested in coming and that had thought this was coming earlier, and therefore may be quite prepared to come in as early as Tuesday.

If they are not, then I would suggest we put it off if we cannot get the right group in, but otherwise, start things off on the Tuesday with those groups. It is my understanding that the parliamentary assistant who is going to be carrying the bill cannot be here on the Thursday, and therefore any groups that cannot make it in on the Tuesday we should try to book for the following Monday.

The Chairman: Could we start with the parliamentary assistant and his presentation on Monday?

Mr R. F. Johnston: I am not even sure we need overview presentations on this bill, in the sense that second reading can be seen to have dealt with

it as far as I am concerned. I had a good hour-and-a-half shot at it.

Mr Carrothers: We could be in a position to hear from some parties on Monday then.

Mr R. F. Johnston: I would think it is going to be difficult to be able to get a full list, and rather than trying to do that on Monday, we might be better to try to have a steering committee meeting on Monday to try to organize Bill 147, the next bill on our orders, and instead try to get a full docket on Tuesday afternoon.

Mr Carrothers: That is a good idea.

The Chairman: The steering committee has other work as well to consider, including the budget. If we are not able to complete it on Monday, we could do some of that on Thursday as well, because the parliamentary assistant is not available Thursday.

As I understand it, we have reached a consensus that we could dispense with the parliamentary assistant's presentation on Bill 5, that we would go with groups coming in for presentations on Tuesday and, if necessary, the following Monday. Is that agreed?

Mr Carrothers: How many groups do you expect might want to speak to this?

Mr R. F. Johnston: I am not sure. The groups I have been talking to have been primarily from the multicultural community. They have worked together on this in the past. I said we would not be setting apart much time and that therefore they might want to combine on a group presentation, so I would be surprised if we have more than seven.

Mr Carrothers: Realistically, we could do it on the Tuesday.

Mr R. F. Johnston: It is possible, depending on how many names other members would like to bring forward. I think that is one of the roles the chairman should take, to canvass members to see if there are people they think would like to come in and speak on the heritage-language issue at this stage. We might even be able to finish it on the Tuesday if we get started early enough, and if not, then cleaning it up on the following Monday may be all right; or if the parliamentary assistant can change his schedule for the Thursday, then we could do it next week. There is some urgency to getting it through before the end of the month. I would not want to see it held up unduly in committee.

Mr Carrothers: That was just the point of my question. I wondered if we might just agree to try to do it by Tuesday, that is all.

The Chairman: One other question, so that the clerk has some direction: Should we follow the same time lines we have used for presentations on other bills: half an hour for groups and organizations and 15 minutes if there are individuals?

Mr R. F. Johnston: My sense is that we should only be inviting groups to this particular thing.

The Chairman: But is a half-hour presentation enough?

Mr R. F. Johnston: I imagine that will be adequate for most of them, but at this stage, since we do not know how many we have, why do we not play it by ear, thinking that if we have a full docket that is what we will do and if we do not then we can obviously provide leeway?

My concern with Mr Carrothers's question would be to state now absolutely we will get it done on Tuesday.

Mr Carrothers: No, I said we would try.

Mr R. F. Johnston: For groups that want to attend and that one day is bad for them, I think having an option is really important.

Mr Carrothers: My point was just to try, not to get absolute.

Mr R. F. Johnston: I agree. I have no problem with that.

Mr Carrothers: Make all efforts or whatever.

Mr R. F. Johnston: There is no desire to delay this bill at all. In fact, as any of you who were in the House know from my speeches, we need to talk about what process follows from this.

The Chairman: Is it your understanding that Mr Jackson, who is the Conservative critic, would agree?

Mr R. F. Johnston: It is my belief that Mr Jackson will have no difficulty with this and that he was not particularly trying to elicit a lot of people to come in. He was under the impression, though, that we would not be able to discuss this until Monday, so he may not be anticipating it. Therefore, one caveat here would be that when the clerk gets in touch with his office and finds out what his schedule is, if that is totally contrary to the Conservative critic's timetable, then we will have to adjust it.

The Chairman: I just want to bring to the attention of the committee that the clerk was unable to get hold of Mr Jackson this afternoon, so all of this is subject to—

Mr R. F. Johnston: But it is a regular sitting time for the committee and one hopes that he would be around the House.

The Chairman: Right. I think we have our direction. Anything else? We will adjourn until Tuesday and the subcommittee will meet on Monday.

The committee adjourned at 1805.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT, 1989

TUESDAY, 13 JUNE 1989



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From the Federation of Chinese Canadians in Scarborough:

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From the Multicultural and Race Relations Committee of Human Services of Scarborough:

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LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, 13 June 1989

The committee met at 1541 in room 151.

EDUCATION AMENDMENT ACT, 1989

Consideration of Bill 5, An Act to amend the Education Act.

The Chairman: The meeting will come to order. The standing committee on social development is convened to consider Bill 5, An Act to amend the Education Act. We have with us, representing the minister, the parliamentary assistant, Mr Beer. We are starting off with hearings that are scheduled for the afternoon with a number of delegations.

At this time I would like to call upon Ernest Nyitrai, executive director of the Ontario Separate School Trustees' Association. Would you take one of the seats across from me. You have half an hour for your presentation which includes presentation plus questions. I would ask you to proceed at this time.

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION

Mr Nyitrai: Thank you very much, Mr Chairman and members of the committee. I would suspect that my presentation will probably take about five minutes at the most. It will not be very long at all.

Our association responded at the time when the yellow paper was submitted in 1987 by the government as its intention to deal with the issue of heritage languages. I have made available to the committee members a copy of the response that our association made at that time to that paper. Our comments were relevant at the time and I believe they are as relevant, if not even more so, now. If you would not mind, I would just like to talk to several of the main points that are in that particular submission.

I have also appended another item that you no doubt already have, but I thought that for the purposes of our boards, the boards that are members of the Ontario Separate School Trustees' Association, it would give an indication of the growth of the heritage-languages program from 1980-81, through the use of the ministry's statistics, up to the most current that we have, of 1986-87.

Of the number of boards that we have, as of 1986—I am using comparative information—at the time we had 53 separate school boards that had both a French-language section and an English-language section to them. There are an additional six separate school boards which are purely French-first-language school boards and for purposes of that are not members of our association, but all of the other separate school boards that potentially can be, are members of the Ontario Separate School Trustees' Association.

You may notice in there the blue sheets, the 1980-81 statistics, they indicated too that we had 29 of our 53 member boards, about 55 per cent of our boards, already entertaining heritage-language programs in a host of various languages so listed in the ministry document.

That remained steady—actually, no, it dropped one to 28, now 53 per



cent, but the object there, I believe, would be to indicate that our systems through those years and up to the current generally have supported the idea of heritage-language programs and have indeed been offering the programs in their system for a number of years.

It is on that basis that we commented accordingly in the presentation which we made at that time to Shannon Hogan, who was the director of the Centre for Early Childhood and Elementary Education responsible for responses to that yellow paper.

I still think, and our association very much believes, that to ensure that we have in Ontario that well-established multicultural society that has been established for quite some time, it is even more incumbent upon our system to offer that strong support for this new government initiative at that time, and now the legislation, and to support that wholeheartedly.

Therefore, our presentation today basically is to do just that, to come before the committee members to indicate the support of the Ontario Separate School Trustees' Association for that amendment to the Education Act and to let the ministry and this committee know of that support.

It is important for us, as Ontarians, not just as representatives of the separate school system, in our judgement, to ensure and do everything that would minimize intolerance to one's cultural background, and indeed anything that would lead to a form of antiracism and antidiscrimination in Ontario. We wholeheartedly feel that this bill that is before the committee at the moment would indeed help to do that, develop tolerance for one's cultural differences and recognize what is terribly important in Ontario, that we are indeed a very well-established multicultural society.

Although there are no specifics, other than the section in Bill 5 that would permit the minister to make regulations mandating school boards to enter into heritage-language programs, you will note by the comments we made originally too that we did not feel at all averse to that mandating. We again were working from the premise that many of our boards already had heritage language as a way of life, if you wish, and we did not feel, nor do we believe even now, that mandating that program is itself going to cause any deference or any difficulty whatsoever for school boards because of the criterion that we think will be in there, that being that as long as 25 people ask for a particular cultural heritage to be taught, the board itself would be required to do that.

The one thing we like about the amendment in particular is that it does not describe the way in which that particular program must be offered. It will leave that flexible, as we read it, and we like the idea. If it is not the way we are reading it, we hope that indeed it will be that way: to leave it flexible in the way in which it is to be offered, either during the schoolday, as does happen in a few of our boards, or after school or on Saturday. We believe that flexibility is vitally important.

I think I will leave it at that, if I may. If I could be of some service in answering any questions the members may have, I would be happy to do so.

Mr R. F. Johnston: I wondered if I could get some factual supplementation from the information you have already provided us. Can you tell me which boards are the ones that have it in the regular day in your system?

Mr Nyitrai: I believe there are three boards that would be offering it. I could be wrong. Certainly the one that is best known is York separate, just north of Metropolitan Toronto. We think it is offered in Hamilton-Wentworth and in Ottawa. Excuse me, Metropolitan separate offers it in some of instances as well.

1550

Mr R. F. Johnston: I would like to talk about this a little bit in the context of language instruction in our schools in general, if I could. How many of your boards are offering transitional classes for refugee children, etc, who are coming into the system with almost no English at all and are getting some assistance in their own language? Do you know?

Mr Nyitrai: You are talking about English as a second language primarily, in that manner?

Mr R. F. Johnston: That would be most of it, I would presume, at this stage.

Mr Nyitrai: I do not have that statistic readily available. We can certainly make it available to you. I would suspect—and it is only that at this stage—that it is relatively high. Of our 53 member boards, certainly a number are very small boards and the incidences of English as a second language may not be relevant to them. But certainly I suspect that most, if not all, of the boards in southern Ontario would be offering it.

Mr R. F. Johnston: In the list of languages, in terms of native languages, the only one that I noticed right off my quick reading that is being taught in the separate system is Cree; that is, there is no Ojibway or Mohawk or Iroquois being instructed. Is that current?

Mr Nyitrai: I do not believe it is. I believe that Ojibway is being taught as a heritage language within our system in Nipissing. That is the only one I am aware of where that is occurring now. There may be others, but I am not aware of them.

Mr R. F. Johnston: I am pleased with your support for the progress at the moment. You have not dealt with an issue which I presume the next group is going to deal with, the whole question of mandatory programs. Over the years, associations like your own have had difficulty with mandated programs from time to time arriving on their lap from the ministry. I wonder if you could talk a little bit about why you think this is appropriately a mandated program, if there is demand.

Mr Nyitrai: The key to it, I believe—you just indicated that too—is that it is on demand, certainly within the community. We in our separate school systems, I think, generally have always felt—that does not mean that is not also felt by the public school system by any means, but certainly within our system—and recognized that our systems appreciate this multicultural heritage in the society that we currently have and want to work towards ensuring that this is heightened, that it is recognized not only within the programs that are offered within the school system but indeed throughout all of the day, through any action that is undertaken by our boards, from the role of the trustee, if you wish, right to the role of the classroom teacher.

With that as a basic given, and that premise is certainly rooted within

the Christian foundation on which our system is based, to do something that parents would very much like is again very much central to the way in which our system has always advocated that the parent is the primary teacher in our system and indeed in our families. With those two basic premises, the issue of mandating a school board when a group of 25 parents wish a particular program to be offered and to do it in a way that enhances our multicultural societal capacity to understand each other and to become tolerant, we do not believe that is hurting the authority of the school board and does not take away necessarily our school boards' ability to be able to offer the kind of programs we think are important. In this instance we think this is a justifiable intrusion, if you wish.

Mr R. F. Johnston: There are two other matters, if I could raise them. These are perhaps more difficult questions, questions around quality of education. Some people have raised concerns about lack of standardization in terms of expectation for heritage-language instruction across the province, the fact that within the context of the rest of the education it is being done by instructors rather than by teachers, that the same kind of accreditation is not required and the same kind of standards for curriculum are not being required.

Do you have any comments about that and any suggestions about where we should be going from here in terms of getting more quality control of that in the system?

Mr Nyitrai: In the area of whether the teacher should currently hold an Ontario teaching certificate before he or she is able to teach heritage language, the best example for us at this stage is that which we currently enjoy in York and York separate.

Where it is in the extended day in York separate—this is primarily in the Woodbridge community of York separate—the instructors in heritage language, because it is part of the extended day, indeed are qualified teachers and therefore fit on to the grid of the school system and are compensated accordingly. That has not caused York separate any difficulty whatsoever, mainly because it is part of the extended day and it is blended in and is taught by those teachers who are currently teaching other subjects within the school.

To mandate all of the instructors to have Ontario teaching certificates could potentially be going one step too far. I believe that instructors—and I feel for an understanding of one's heritage—do not necessarily need to have the same kind of qualifications as we currently have within our schools, especially if it is being taught in the after-school hours or on a Saturday.

I would certainly suggest, and I think our association would aim, that if it is to be in the extended day, the qualifications of the instructor be such that they at least do have the Ontario teaching certificate and the experience we have in York in that regard has not taught us adversely.

In the area of the curriculum, the resource guides or the resource materials, the one suggestion that was included in the yellow paper, that we commented on here and that we have also very much supported is the idea that the program resource material would be a guide, as opposed to a definitive classroom set of materials.

That is consistent with the way in which curriculum is developed in Ontario currently and indeed dealt with. We think that process has afforded



school boards in Ontario well and we do not think it would cause any adverse difficulties for our system if that same process was used.

It would permit our school systems to develop the classroom sets within the context of our religious foundation and therefore hone that in such a way that the heritage language that is being developed and taught in our system is from the basis of our Catholic upbringing.

Mr R. F. Johnston: I do not want to get into a debate with you at the moment about some of the potential dangers there are about having one quality if it is within the extended schoolday and another quality if it is outside the schoolday. I think that is an issue we certainly have to grapple with in the future around quality of service in education.

I did want to put this also in the context, if I could, and hear your remarks about language instruction and the role of language in the school system in general at the moment. It seems to me that it is high time for a review of just where we are going in terms of the role of language in the school system.

I have been getting a large number of complaints about the way core French is being presented. In fact, this is as problematic as it was when it was taught when I was in high school in the 1960s. I have had complaints from people who are teaching Italian and other languages at university, in terms of people coming out of our high school system learning Italian, etc, as a language in the curriculum. I am wondering if you do not see that it may be time we looked at some of the underlying premises of language in the school system, when we teach it and how we teach it, and in that context obviously heritage language as well, and some more systematic way than we have been doing in the past.

Mr Nyitrai: I am not at this stage ready to talk to that item, if you do not mind. We have not come here to talk about that issue specifically. We wanted to be here just to support Bill 5 and I would like to contain it just to that if I may.

1600

The Chairman: Just so members know, I have Mr Jackson, Mr Daigeler, Mr Beer and we have about 12 minutes left in this gentleman's time.

Mr Jackson: It is really good to see you, Mr Nyitrai. You know of my concerns and reservations about several elements of this bill. I would like to ask you, as a former trustee, right off at the top why you have not expressed some concern about the time lines and funding commitments with respect to this program. Just to put a finer point on it, the bill is only one sentence long. It leaves to regulations many matters. They guarantee access but they do not guarantee funding.

Currently it is under continuing education; it could be changed at some point; it is at grant rate and that could change. You simplify the statement of learning materials, the development of learning materials to just simply that you will support the initiative but, in fact, we know through the 1970s and part of the 1980s that there have been several times when programs were started and there is just no money after the third year.

To what extent are our separate school boards prepared to elevate priority of this over, say, the English language, mathematic skills or any



other skill program where they are required to have consultants and constant curriculum review?

Mr Nyitrai: Through you again, Mr Chairman, to Mr Jackson, much of the legislation or regulations that have affected the separate school boards in the past and even today, when we work on the premise of incrementalism we welcome a program like this. We think not only is it operating well in our systems at the moment, but also that it indeed should be offered in all of our school boards where the numbers have to have warranted it.

We recognize too that what you have just described has happened in the past and it might happen in the future. That should not take away, however, from the basis on which the design of having heritage languages taught within our schools was mandated or on the way in which it is to be taught in our system.

We do not think that the argument is about whether funding is or is not adequate at this moment. At this stage, we want to have the regulation placed to allow our school boards to offer it in the way in which it is mentioned. Then, if the funding for it is less than desirable, as has been the practice in many of the ways in which our separate school system is operated, we would go after that item.

Mr Jackson: I am not used to seeing a presentation by trustees where they have left that opening so strong in a brief. Perhaps we could move to the next area, which has to do with the reference in the regulations that a heritage language is a principle that must remain separate between the separate and public systems but not between the private and public systems.

I had hoped that we would have an opportunity to have a clearer presentation by the government in terms of what the thinking was on that recommendation or what the input was. You have chosen to be silent on that subject and perhaps you could enlighten us as to why you feel the commitment to multiculturalism should be contained within the Catholic community and not allow for interboard, coterminous board access to programs where five children in the public system and 20 children in the separate system could provide a program. You would have to provide the program without grant funds if you wish to reach the 20 children in your own system.

That raises several questions and I would like to pursue that with you for a moment. What is the thinking that goes into that and why do you support that and for what reason?

Mr Nyitrai: We did not at that time look at the possibility of having three or four students from our separate system wanting a particular program, these parents wanting a program too—and 22 of them are offered in the public system—and having them go to that school. That was not a concern or at least that was not a consideration of ours at this stage. Our consideration only was to look at what was being suggested.

At that time the yellow policy paper was something that our Catholic school boards very much should be involved in supporting. Were those initiatives that were outlined in that particular document worthy of support? In our judgement, in the review that we took for it, indeed they were.

Mr Jackson: Let me rephrase it then. Have you have had an opportunity to examine the regulations? As we understand, this bill will be implemented for September. I understand your mindset from the yellow paper. That was old legislation of a similar nature.

Trustees will come and bang on every political party's door right after the next provincial election saying, "Look, we are into this program now and it is costing us a fortune," "It is not working for the following reasons," or "We relied on certain assumptions." I am just trying to get a handle on whether a trustee organization has been able to take the time to think through some of these questions, because they have implications.

If you do not have a coterminous arrangement between a separate and public board but the bill does provide for a neighbouring board, and then you bring in the notion that it is mandatory, that it is open access—which is a whole new concept in terms of adult education, or mandatory programs and open access—any student who says, "I would like to learn Chinese," is going to start taking it.

Then there is the fact that you have to supply the transportation, which can be extremely expensive. It strikes me that even within Catholic boards there might be some concern that there would be costs associated with this that cannot be contained or reasonably monitored. If you support the principle of the yellow paper, then I will stop my questioning.

Mr Nyitrai: Again, we do, and that is where I would want to end. Also, you might be privy to a draft of the regulations. Our association, the Ontario Separate School Trustees' Association, at this stage has not been privy to it.

Mr Jackson: So do you support the separate nature of the heritage language, to keep you separate and distinct from the public system?

Mr Nyitrai: We support the principle of offering heritage languages within our school system. There are a number of shared programs and activities that occur between coterminous school boards. If heritage languages can be offered in that mode and indeed it does not frustrate the operation within each of the two school boards, I do not know why that would not be considered as a possible sharing or joint venture.

Mr Jackson: I appreciate that because, as you know, with the Ottawa-Carleton board there is a different structure.

But the principle of language and coterminous sharing has moved this province from Bill 30 to a modified redefinition of that relationship under a language approach to education. It strikes me that we are now moving again into a language context of providing education, but we are moving back to the Bill 30 premise that the two systems must remain absolutely separate. Time prevents us from getting into some of the other issues with respect to the delicacy and difficulty of providing language and its religious implications. We have had some presentations in that regard.

It strikes me that we moved away from Bill 30 when it came to the French language and we are moving back to Bill 30 under this government's regulations with respect to every language other than English and French. It just strikes me as odd. I am pleased that at least you have been able to provide the comment with respect to some degree of open-mindedness and flexibility, should that model be considered.

Mr Daigeler: My question is related to the comments that Mr Jackson has just made. I am not sure at all where Mr Jackson is getting the idea that this particular bill is not encouraging co-operation between the separate and public boards on this matter as on any other one.

My question to Mr Nyitrai is, are there presently in the area of heritage languages any examples where a separate and a public board are co-operating?

Mr Nyitrai: No, not in the context that I believe Mr Jackson was wanting to pursue. I am not familiar of any. As to the distribution and sharing of resource materials between boards that are offering a heritage language in each of their respective systems, that goes on rather widely. It is not just within coterminous boards. I know that at the York separate board the resource material for the teaching of Italian in the extended day has been widely circulated, not only within our own separate school boards, but to other boards within Ontario and within Canada. There is a lot of that, I believe, going on. But as to the joining together with numbers to offer a particular program, I am not familiar with whether that is going on.

1610

Mr Daigeler: How would you describe it in my own case where I am a separate school supporter and my children do attend a heritage language class which is offered by the Ottawa public board?

Mr Nyitrai: It is after school or on the weekend, isn't it?

Mr Daigeler: Yes, it is on Saturday.

Mr Nyitrai: That may indeed happen but that is outside of the schoolday, as I understand it. I would look upon the question I was asked by Mr Jackson, that if it was ever considered as part of the extended day, that would cause some difficulty.

Mr Daigeler: That is beyond the present bill.

Mr Nyitrai: I am not familiar with how extensively that goes on. I think it might be more isolated than extensive.

Mr Daigeler: It is certainly common practice in the Ottawa area. I do not get any sense whatsoever from any of the boards, having been a trustee myself before, that we would want to do anything different. In fact, that is one of the areas where I certainly sense a great desire to work together. I think that is only to be encouraged and I think that is even in the bill.

The Chairman: Mr Beer, you have about a minute and a half.

Mr Beer: I will be quick with one question. I might just note that I believe the Dufferin-Peel separate board offers Hebrew courses and that Metro separate has students from the public system in its classes. So that I think there is a spirit of co-operation there and certainly the regulations would encourage that.

I think a number of the questions have already been covered, but I have one last question. Have you as an association or have some of the boards that have been most active in the program carried out any studies in terms of the outcomes of the program, particularly around the question of helping students adapt to Canada by helping to reinforce their heritage languages?

Mr Nyitrai: Certainly our association has not. I am familiar, however, with one, with the Italian heritage language within Metro Toronto and certainly within York. Work has been done by the Columbus Centre to that end.



The two boards particularly have been working on it with the Columbus Centre in the area of heritage language in Italian and have addressed that question. It may happen in some of the other language groups as well, but I am not familiar with that.

In the areas that I am familiar with, even in Mandarin Chinese, which would be in the York separate area particularly and is the next largest heritage language, if you wish, that is offered, I do not know if there is anything of that sort going on.

Mr Beer: We have been told of other studies, particularly at the Ontario Institute for Studies in Education, which make that point as well. I think it is also interesting to look at the experience of individual boards which have been carrying on those programs. Anecdotally, I think the York separate board has said and certainly the teachers have said that they feel that that provides a great deal of strength to the students as they then move through with their regular program. That would at least appear to be the experience of the other boards that do it as they continue and seem to find that this is an effective program.

The Chairman: Thank you very much, Mr Nyitrai, for representing the separate school boards and coming in to make your presentation and answer questions from members. We appreciate your assistance.

Before I introduce our next delegation, I neglected to do something I should have done right from the top, and that is to mention that this morning my office received a call from the Canadian Jewish Congress requesting to appear before the committee.

Recognizing that one of the groups today had an hour and that group had been recommended by Mr Johnston, we checked and agreed to try and fit them in as part of that hour, to give part of it to the Canadian Jewish Congress, but they indicated that they could not come on such short notice. So they were offered a half an hour today but could not come. I just wanted to bring that to the attention of the committee and seek some guidance from the committee on that.

Mr Jackson: I would like to refer back to the subcommittee's meeting yesterday. My information is that we did not indicate our willingness to waive a short presentation by the minister to answer any questions.

The Chairman: Before you go on, I want to correct something that I told you which, upon checking with the clerk, I found was in error. The decision to waive the minister's presentation was not made by the subcommittee; it was made by the committee last Thursday at the end of the day. I was trying to go from memory and I was wrong in telling you that it was made by the subcommittee yesterday.

Mr Jackson: Had I been here, I would not have conceded to that. I request and suggest that we complete our regular business on Monday as scheduled, and on Tuesday we begin our work with the Canadian Jewish Congress getting a half-hour presentation and then a half-hour presentation from the minister to answer questions like the ones I was just raising about the separate school boards.

Then we can finish—I guess it is not even clause-by-clause but clause review—and resolve to complete the bill on Tuesday. I suggest that if the committee would be open to revising our agenda along those lines, I would appreciate it and I think it would be helpful to our progress.



The Chairman: Does the committee wish to offer the Canadian Jewish Congress time on Tuesday morning, assuming that time is available? The other alternative we could give them would be to come here on Monday and take the chance that one of the other groups may not show or may not use all of its time and then we could fit them in Monday afternoon.

Mr R. F. Johnston: First, to be very clear—because this is going out over the airwaves now and goodness knows who is now writing down that they should come on Tuesday morning—it would be on Tuesday afternoon after orders of the day.

Mr Chairman: Sorry. Of course.

Mr R. F. Johnston: Yes, that would be a good thing to do. I think it should be remembered that when we decided not to have the minister come before us—much at my instigation, I must say, and my preference—there was the caveat put on it that Mr Jackson was not here at that point and that it should be referred to him and adjusted if necessary.

Therefore, I support the combination of things that Mr Jackson is suggesting, given the fact that we have time on Tuesday and agree to complete our business on Tuesday, that we hear from both the Canadian Jewish Congress and the minister.

Mr Jackson, perhaps others might give to you before the day is out a list of things that they would like from the ministry, and I mean the minister or the parliamentary assistant or the minister's representative, when I talk about the ministry. If they give that list to you, then you can maybe have that in advance so that we have something to work with around the regulations and other matters that Mr Jackson has been raising.

Mr Carrothers: I believe that would be fine. I just want to ask one thing. The committee also now has before it Bill 211. I think there was some discussion of at least doing the ministerial part, getting on with that too. I wonder if on Tuesday we could at least have the understanding that we want to move on to that as well.

The Chairman: Mr Carrothers has raised the question of whether, following our completion of Bill 5, we would still have time to commence with the ministry presentation on Bill 211.

Mr Carrothers: We may well have that, Mr Chairman. I just wanted to draw it to everyone's attention so that we understood that that was what we hoped to accomplish.

Mr Jackson: It is just that it is more the custom to be sure that if we are going to ask these individuals to come over from the Ministry of Housing, they do get an opportunity to get on. If they do not, that creates some difficulty. The minister herself may wish to attend as well. It is not common to have the Minister of Housing waiting in the wings while we are still debating a clause on Bill 5.

The Chairman: I believe the parliamentary assistant, Mr Nixon, will be handling it. He knows the arrangement that we have made.

Mr Jackson: Whatever the priority the minister is putting on is not the issue here. It is just whether you are going to line people up and then not get them on. I think we have a rather full Tuesday, from what it sounds

like. I may be wrong, but we might get around to it at 5:30 pm and still only get halfway through the presentation.

1620

The Chairman: Would you concede that we may or may not have a full Tuesday depending on whether or not the Canadian Jewish Congress is available and if it looks like we can make further progress? Depending on their availability or not, we could start with the Ministry of Housing.

Mr Jackson: That is fine.

Mr Carrothers: Perhaps we could clarify that and the clerk—

The Chairman: Okay. Thank you for dealing with that logistical matter.

We will get on with the presentations now. Representing the Ontario Public School Boards' Association is Ruth Lafarga. Would you introduce the people with you to the committee? Welcome to the committee.

#### ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

Mrs Lafarga: Thank your very much. We appreciate the time you are giving us this afternoon. My name is Ruth Lafarga. I am president of the Ontario Public School Boards' Association. On my left is Nancy Bentley, second vice-president of the association and a trustee from Lambton county, and Marie Pierce, staff, who is director of policy and legislation for OPSBA. With your indulgence, we would like to read some of our presentation because we realize you have just received it and have not had a chance. We will ask Nancy to start.

The Chairman: You understand you have one half-hour, including time for questions?

Mrs Lafarga: Yes.

The Chairman: Proceed.

Mrs Bentley: The heritage-language programs have been the focus of much concern and debate since the December 1986 introduction of a private member's bill proposing mandated heritage-language classes within the schoolday. Even though Bill 80 received second reading and consideration through public hearings by the standing committee on social development, it did not go any further. Bill 80 was followed by the June 1987 release of a Ministry of Education discussion paper entitled Proposal for Action: Ontario's Heritage Languages Program.

In October 1988, the Minister of Education (Mr Ward) announced that the heritage-language programs provided on a continuing education basis would become mandatory for Ontario school boards effective September 1989. Bill 5 proposes to give the Minister of Education the power to require school boards to offer these programs.

OPSBA recognizes that Ontario is a province rich in cultural and linguistic diversity and heritage. This multicultural reality has been and will continue to be reflected in Ontario's public education system. We recognize that changes are required in the current program, especially in the

areas of curriculum enrichment and staff development, and we agree with the need for new forms of support for school boards to assist them in further developing existing programs.

Mrs Lafarga: However, the Ontario Public School Boards' Association is fundamentally opposed to these programs being mandated and has a number of concerns which we wish to raise about the mandatory provision of heritage-language programs by school boards.

1. The mandatory establishment of heritage-language programs undermines school board autonomy and ability to respond to local community concerns. There is the implicit assumption that the vast majority of school boards are in some way denying young people the opportunity to learn and appreciate their heritage language. This is not the case, and I do have some figures for the number of public boards that offer the program. School boards have been and will continue to be responsive to local community demands for education.

2. No other continuing education program is mandated by the Ministry of Education. Are mandated continuing education programs in other areas, such as adult education, to be the next step?

3. The proposal that instruction in a particular language must be provided if requested by the parents of 25 children is impractical. Included in this number would be children of all ages and abilities and possibly students from all parts of a large school district. While OPSBA does not support mandatory programs, if they are to be required they should be requested by the parents of 25 students from a given division and possibly a given area of a jurisdiction.

4. Children with no background in the heritage language would be able to request this program. This represents an abuse of the original intention of providing heritage-language programs and should not be forced on Ontario's school boards.

5. Currently, heritage-language programs are optional and any transportation costs are the responsibility of the parent or guardian. If these these programs are to be made mandatory, the onus to provide and pay for transportation must remain with the parents or guardians. If school boards are required to provide busing for students, this could prove more costly than the program itself, especially in sparsely populated areas.

6. There are funding implications. It is proposed that the funding for heritage-language programs be maintained at current levels; that is, \$37.50 per hour for each class of 25 pupils, with a reduction of 90 cents per pupil under a class of 25. This funding level may be inadequate and must be reviewed on an ongoing basis to ensure that heritage-language programs do not place an additional burden on the local property tax base.

7. For many heritage languages, there are no available qualified teachers. Ontario's universities and colleges do not have the programs to provide qualified staff for boards to hire.

8. School boards do not have the supervisory staff with language facility to evaluate and supervise the heritage-language programs.

9. Adequate approved resource materials are not available for many heritage-language programs that potentially must be offered.



OPSBA therefore recommends that heritage-language programs continue to be optional programs offered on a continuing education basis, with school boards having the primary responsibility for staffing, supervision, curriculum, number and location of classes.

Mrs Bentley: Bill 5: OPSBA has concerns with the brevity of Bill 5. The bill simply states that the Minister of Education will have the power to require "boards to offer programs that deal with languages other than English or French and govern the establishment and operation of such programs." It is only in the compendium to the bill that the intention of the legislation is indicated. It is stated that the legislation is intended to require boards to offer these programs in elementary schools on a continuing education basis or through the purchase from another board. No other details are provided.

Before this legislation receives royal assent, the intention of the legislation must be clarified and the proposed regulations concerning the establishment and maintenance of these programs must be released for consultation purposes.

The announced intent of the government to have these programs in place for September 1989 is, we feel, totally unreasonable. Not only are details on the regulations governing the establishment of these programs not available; funding is not in place for in-service opportunities for heritage-language instructors and adequate resource guides and learning materials are not available.

OPSBA therefore recommends that before Bill 5 proceeds, the regulations concerning the establishment and maintenance of these programs be released for consultation purposes and that the announced September 1989 implementation be extended.

With respect to the Proposal for Action: Ontario's Heritage Languages Program, although no details are provided on the nature of the mandated heritage-language programs, OPSBA would like to make a number of comments on the proposal for action document in which indications are given of the possible direction the government may pursue in this area.

With respect to open access provisions, OPSBA supports the proposed action that will enable children from public school boards to attend heritage-language classes in other public school boards without the payment of fees. However, we can only support this action if the level of provincial funding is adequate to cover the full costs of these programs. Local taxpayers should not be required to subsidize programs for children from other school board jurisdictions.

With respect to in-service training opportunities, OPSBA supports the ministry initiative in the area of in-service training, but a three-year incentive fund is simply inadequate. Since there will exist an ongoing need for in-service training of heritage-language personnel, funding will have to be provided on an ongoing basis.

Program resource guide, learning materials and research: With respect to this area, we do wish to stress that representation on the ministry advisory committee must reflect the diverse nature of the school boards throughout the province. This is extremely important, as you recognize there is some tendency to feel that these initiatives come from Toronto. This committee would need to



represent large, small, urban and rural, as well as northern and southern boards.

1630

The recommendation is that we recognize the need for the development of appropriate learning materials and we support the ministry initiative in this area. However, more information is required on the mechanism for the setting of the criteria for Ontario's heritage-language programs. There is no indication who is to set the criteria and evaluate the learning resources based on these criteria. The Ontario Public School Boards' Association recommends that the mandate of the ministry advisory committee be extended to fulfil this important function.

OPSBA further recommends that 100 per cent of the cost should be covered and believes that a five-year incentive fund will not be sufficient. Since there will exist an ongoing need for learning resources, funding must also be provided on an ongoing basis.

Mrs Lafarga: Finally, in summary, OPSBA would like to stress that OPSBA does not support the mandatory establishment of heritage language programs. Ontario public school boards have demonstrated and will continue to demonstrate a commitment and responsiveness to requests for heritage languages programs in this province. This commitment and responsiveness makes it unnecessary for these programs to be mandated.

The ministry proposals for action in the areas of in-service training, curriculum development and research into heritage-language programs for the most part are positive steps in assisting school boards in developing existing programs. However, funding for these initiatives must be provided on an ongoing basis.

If these programs are to be mandated, Bill 5 must not receive royal assent before the regulations governing the establishment and maintenance of these programs are made available for consultation purposes.

The proposed unreasonable implementation date of September 1989 must be revised.

Open access provisions for heritage-language programs should be applied only if funding for these programs cover the full cost of these programs.

Mr R. F. Johnston: I have a question or two. I am always surprised and disappointed with this kind of presentation, frankly. I can understand why the boards are concerned about mandated programs being dumped on them and I can understand the need and desire to make sure the funding resources are in place. I have great sympathy with that, but in terms of the vision that then gets put forward, especially on page 2 of your document, is a very negative vision and not very open.

If I can make a couple of comments, one would be that one reason for having a mandated program is in terms of having an education system that reflects our society in a mandatory fashion. The ethnic composition of our society has changed enormously, yet the role of language and heritage in our education system has not been firmly mandated at this stage.

You can say, and I agree with you, that many of the boards have been wonderful about how they have embraced this reality in the past and have taken

initiative on their own, even before there was provincial legislation of any sort. But I come from an area called Scarborough that has consistently not respected the wishes of its ethnic minority, which I have been fighting for for a number of years. I refer to this as the Scarborough amendment. In some ways, I wish it was not necessary and that everybody saw it as a mandatory requirement of any board to respond to parents in this fashion.

What I have difficulty with is when you then say it is the mandatory that bothers you. You can debate whether my analysis of one of the reasons why you should have a mandatory program is adequate or not. But you then use a number of reasons to oppose the question of the concept, which is already operated by a number of your boards.

I have a real difficulty with that one. You start to say you are worried about the range of ages of kids who are involved in some of the classes when you have 25 together. That is exactly what happens in most of your boards that are operating these programs right now.

There is a mix of ages of kids in those classes. I would hope you are endorsing the fact that those boards are doing that kind of thing at this point, that it is a positive thing, rather than saying that we must keep our kids of one age together even if that means there are only going to be 10. The groups and the boards are working it out, because of the realities, so that these kids can be in a much broader area.

When you say you are worried about the heritage-language courses being taken by kids who are not from that heritage, I think, "My God, that is the counterargument to all the balkanization arguments that are out there." I think it is a wonderful thing that at the Orde Street School, a lot of the kids who are taking the Chinese heritage language there are not Chinese. I think that is a positive thing. I am surprised you are attacking the approach of the Toronto Board of Education on that, which is how I then read this conceptually.

When you say there are no available qualified teachers for some of the languages, that again has countered your argument about this being a continuing education course. In many continuing education courses, the people who are teaching those courses do not have accreditation. The boards that are operating at the moment doing these kinds of things are working within that system now.

The Chairman: Mr Johnston, are you getting to a question?

Mr R. F. Johnston: Therefore, what I am concerned about as I come to this, as I say—I can deal with the mandatory side of things. I can understand how you are worried about that being dumped on you and worried about the money, but why are you putting forward a rationale which is counter that being used by the boards in your own network that are already providing this program so successfully?

Mrs Lafarga: My turn. I would like to respond to that. I think this is always a problem when you see the brief for the first time and you do not have an opportunity—in attempting to answer it, I believe we have to put the emphasis on the mandatory program because we are really very proud of what our public boards do offer. We have shown that from 1981 to 1987, there has been a growth from 35 to 40 boards and the program has grown from 25,000 students to

38,000. There has obviously been an effort and we are very proud of some of the things you have said.

Let me address three of the areas you have talked about. The Scarborough board: I think probably that one needs to be put on the table because it is a public board. One of the comments I would like to make is that if you feel you have a problem with a particular board, should we mandate provincially to counteract that particular problem?

My second comment on that particular area is that it is a democratic process for the board. The board has to take the heat on its decision and I think democracy should be allowed to work in that area. I repeat that I do not believe we should make it mandatory for every other board.

I believe in talking about the quality of teachers. We are again alluding to the mandatory nature, because as soon as you mandate programs there is an expectation about quality, supervision and responsibility of that type of thing. So you have to read that in the context of what we have said about not having qualified teachers available in those areas, that we do not have qualified staff. When you have a mandated program, there is always raised expectation on behalf of the parents and I think we have to discuss that with you before you take the step.

I believe your comment on Chinese—being from a multicultural family myself I have a great deal of empathy with this area, but I am not sure school boards should be picking up the tab for those costs. In our con ed program, when people take special-interest programs, it is not the boards outside Toronto that pay the cost of those con ed programs.

Mr Jackson: I do not agree with my colleague the member for Scarborough West on this issue. I thought it was a report that nailed down several points of legitimate concern. They have been enunciated. However, I would like to bring forward a couple of points in the brief that are of interest.

This concept of consultation: I am anxious to learn if you have requested some clarification from the ministry with respect to your point on page 3 and if you have had any success in getting access to the regulations or to any meaningful consultation with the ministry in terms of the very practical questions you have raised.

Mrs Lafarga: We have not. It is not that we have not tried. We have not been able to get any information.

Mr Jackson: I was aware you had tried. I was unaware of what response the government had been giving. Of course, your coterminous trustees were here just before you and they indicated as well that they had not had access to that information either.

I am concerned, and I think I stated that when I spoke in the House on this subject, that we also have this advisory committee. Although you have talked about the composition of the committee, which is a very valid question, my question in the House to the minister was with respect to what it has been doing since he announced this last fall, who is on it and what recommendations are forthcoming.

As I said, this bill is three months and three weeks away from being mandatory in this province. Just on the transportation nightmares alone, when



you move from access to transportation funding, when you move in that one area alone, there is sufficient room for driving some of our fringe urban boards crazy, let alone the cost implications.

I know you cannot respond for what a committee is doing, even if we do not even know if the committee exists at this point, but those are the questions that I have raised and I think your contribution in those areas is very valid, especially given the implications for learning materials.

1640

Let me ask you a more specific question. Do you suspect that as a result of this legislation there will be increased uptake? I am getting different signals that this is not going to mean anything in terms of more children accessing the program than we already have. I have others who suggest that there is going to be a more significant increase because transportation will be provided and because it is open-ended. Do you have any concerns with respect to increasing enrolments in this specific area?

Mrs Lafarga: Our enrolments have been growing quite rapidly anyway, but I would assume that usually, once you see a program mandated, in the early stages you see increased use of the program. We have seen that with French immersion and that type of thing, or at least when you provide transportation. How that would level off I do not think I am in a position to say.

Mr Jackson: I have more questions, but I will yield to other members.

Mr Daigeler: I must say I feel somewhat like Mr Johnston, in particular with regard to your comments on page 2 and specifically to point 4, where you say that if children with no background in heritage language can request this program, this would present an abuse of the original intention of providing heritage-language programs.

I would be rather interested to know what not so much your personal concept but the concept of your association is of multiculturalism. From this statement that you have in your brief, it appears that you see multiculturalism as a one-way street, that is, for new Canadians to maintain and possibly retain their heritage and their culture.

I thought the generally accepted concept, certainly the one that is espoused by this government, is that Canadians who have been here for some time also would benefit greatly from learning other languages and from learning about other cultures. Therefore, rather than seeing this participation of students from, as it were, nonethnic groups in heritage language as something negative, I would see that as something very positive for the whole Canadian fabric. I would be rather interested to hear from you what the position is of your association with regard to multiculturalism.

Mrs Lafarga: I do not believe we are here to discuss multiculturalism, I believe the bill is on heritage language and the implication of heritage language is that it is your heritage; that you are able to learn the language of your heritage. By saying that we are opening it up to other children, we are not necessarily saying we are opposed to that; what we are saying is that we are opposed to it being mandated for school boards.

I think it is wonderful for people to learn other languages. Whether it should be mandated for school boards—that is what we are opposed to. We have



a great number of new programs being mandated on us now, and we have to look at the overall picture and put everything into terms of rank and priority. We are saying that when the government is downloading the costs of education, we have to be in a position to be able to say no on some of these programs.

It is not to debate the merits of people learning a third and fourth language. That is not, I believe, what we are here for. We are here to talk about the responsibilities and how school boards can pick up these responsibilities and if it should be a priority for us out of our local tax dollars.

Mrs Bentley: I would just like to comment, perhaps to underline the fact that we are here as trustees, elected representatives. We are a trustee association, so in approaching a bill like this we have to consider our responsibility and our accountability at the local level—and I am sure that is what you are pleased to know we are doing—so we must look at it with respect to cost.

In that particular instance, as Ruth has pointed, obviously we are talking about a heritage-language bill and not multiculturalism. If it were to be looked at from a multicultural perspective, then there will be additional costs. We have to balance the budgets. We do not run deficit budgets.

I just want to give a brief example of why we feel that it is more important that the decision on how to implement these programs be left at the local level. It is because it is at the local level that we best can sense the needs of the particular area. I happen to be from Lambton county and we have a thriving heritage-language program that is having very great effects on the multicultural aspect of our community.

Only recently we had a special day that was put on for all our special-education students with the co-operation of our heritage-language instructors and classes. They provided instructors. That kind of benefit I do not think you will necessarily derive if a program is mandated. It takes away the ability of a local board to respond and to bring together something that is in the needs of that particular community. That is our concern.

Mrs Lafarga: Perhaps I could just add one point. The figure that we have for English-as-a-second-language programs is 17,588 students needing to be served. This is in 1987-88, so that you can realize that the number already will have increased. Of course, we are not finding that we have the funding to do that adequately or to find the teachers who are qualified to do it. We recognize that the number of people who are coming in are creating problems for school boards. All of these things have to be set in priorities for us.

Mr Beer: I wonder if I might just at the outset say that a question was raised about the advisory committee on the development of the program and also on what it was doing, and I will ensure that by tomorrow everyone has a copy of an outline of the work that the members of the advisory committee have undertaken. That may help in understanding a bit better what it is about.

In looking at the bill and the program, I think all of us at the provincial level and in any party appreciate the difficulties at times that schools boards or municipalities have. I suppose if we feel that problem in terms of funding at times, it is in our relationship with the federal government and some of those programs. I think that that relationship is perhaps not always perfect; indeed, probably seldom.

It seems to me that if we look at the experience of this program since

the government brought it in in 1977, we have had a kind of evolution. I suppose language always has been difficult for us in Canada and Ontario. We need to recognize that we have had to face difficult problems in coming to an acceptance around English and French and their place in our country, and then of more recent date, starting to look at how we should handle other languages, what their role is and what we are doing. I think you quite rightly note concerns, particularly of late, around English as a second language. I know we are very concerned about federal cutbacks in different areas in terms of assisting in that regard.

None the less, it seems to me that there is an inherent, positive element both in developing a program which allows children from a particular linguistic background to maintain that in terms of our own economic health as a nation as we go forward, as they grow up and they are working in various fields and are perhaps able to make use of that language and, increasingly, in developing means whereby students from other linguistic groups can participate in those programs.

When I look at a program such as the one at the North York board has—it is just one that I have been able to see in action—it seems to me that in mandating the program, in a sense we are saying that in the evolution of our approach to language we believe that this is important, but that we are leaving to the board really a great deal of the say in terms of how that program is implemented and develops.

I am just not sure that the mandating in and of itself causes the kinds of problems or will necessarily cause those problems; whether it is mandated or not, there could well be concerns by boards around the funding and around other issues. I would have understood the concerns that you raise, but I do not see that necessarily means that you have to be opposed to the mandating.

1650

Mrs Lafarga: I want to pick up on your point that there have been some excellent programs developed. As I made the point earlier, we are very proud of what the public school boards have done. If you look—again quoting the figures from 1981-87—at the increase of 33 per cent in the number of classes, 30 per cent in the number of instructors and 32 per cent in the number of students, I think we have been very responsive to the demand.

Therefore we ask, why mandating? Why not let the local boards have the right to introduce the program and to be responsive to the parents' concerns in their jurisdiction? If the program is working well, why do we then have to have provincial mandating of the program?

Mr Beer: I suppose in terms of broad provincial policy, as in a number of areas, if one believes that this is a public good as a program in terms of being able to begin at that, there should be equal access across the province. In that sense, I think there is an argument at this point where it would appear to me that the program has gone through a kind of 10-year evolutionary stage. Some, I know, would like to see it go farther more quickly.

It strikes me that what we have tried to do here is to consolidate what we have done and improve elements of it around the in-service training and the development of materials. Obviously, we must continue to talk with boards around funding, but as a province, we are saying that this is a good thing which we would like to see handled in a reasonably similar fashion across the province.

Mrs Lafarga: My answer to that is that local boards should have the right to set their priorities. There are very many programs that have priority now. We are just seeing the curriculum so crowded that I think we really do have to let boards set those priorities, and the province should not be adding more things to school boards and their costs.

Most school boards this year had double-digit increases and it is really a major concern for our taxpayers. We really do not want to see more things mandated, particularly when we are losing our tax base.

Mr Beer: I would say it is--

The Chairman: Mr Beer, we are getting on in our time. Mrs O'Neill, a very brief question.

Mrs O'Neill: First of all, I want to congratulate you, Ruth, on your presidency, which you have just assumed; no doubt we will be seeing much more of you.

I have some difficulty with both of the presentations that have been made regarding regulations, because I do not have the same attitude that the regulations have not been vetted in some way. If you take the second reading that was tabled in the House and the Minister of Education (Mr Ward) made on 18 May, much of what will be the regulations of this one clause in this bill is certainly stated very openly.

The document, I think all of you will agree, has been out there being discussed since early 1987. I got rather sick of going to groups discussing the document. I was very happy when we were going to take action on the document. Much of what is going to be part of the regulations was part of that document that was put out by our former Education minister.

There is still a lot of room for local autonomy in the document. I think that all of the things that have been said regarding qualifications of teachers--the day, the hour--are still going to be local decisions. However, we are also putting limitations on when the program will be offered by setting a criterion regarding numbers, a criterion setting the time lines by which people have to apply. It is not really as open-ended as some of the statements that have been made up to this point have suggested.

What I would like to say is I am very happy, and I think some school board should look at the resources that the minister has committed himself to now regarding professional development, research and teaching materials. All of those things are going to be very helpful to school boards and, as Mr Nyitrai had mentioned, will hopefully be shared across the province by both public and separate school boards.

There is hopefulness here, and I do agree with Mr Beer that it really is another one of our goals to have equity and access in the province for all kinds of education.

The Chairman: Do you want a brief concluding comment for your presentation?

Mrs Lafarga: No, I do not believe so. We are quite proud of our heritage-language programs that have developed from the Metropolitan Toronto model, that has them on the school day unlike other boards that obviously have them on the weekend, and we just would like to be able to continue to offer them on a voluntary basis.



The Chairman: Thank you for taking the time to appear before the committee and assisting us with information which will help us in deliberation of this bill.

Our next presentation is from the Council of Ontario Communities. Representing this organization, we have Udeoza Ogbue. Did I pronounce that right?

Mr Ogbue: Yes, and I dare say you probably don't need heritage language in Igbo yet.

The Chairman: We also have Antonio Garzon, Muriel Fung and Michael Luczkiw. We booked an hour. Do you need a full hour for your presentation? We are running a bit behind schedule. That is why I ask.

Mr Ogbue: We will try to see if we can get it in within half an hour or so.

The Chairman: We would appreciate that.

#### COUNCIL OF ONTARIO COMMUNITIES

Mr Ogbue: As you mentioned, Mr Chairman, this presentation is being made on behalf of the Council of Ontario Communities, which represents about 30 province-wide communities across Ontario. The communities range from German Canadians, Italian Canadians, Spanish Canadians, Greek Canadians, Portuguese Canadians, Ukrainian Canadians, Chinese Canadians, Korean Canadians to Igbo Canadians. Some communities are large; others are small.

The chairman has already introduced the members. The members he just mentioned are all a part of the steering committee of the council. At the end of my presentation, my colleagues will be answering your questions and addressing your concerns.

Of course, we are making this presentation without knowledge of the regulations that will result from Bill 5. Our discussions should therefore be viewed in that context. We will probably not be saddling you with a lot of questions or issues on logistics, pedagogy and things like that.

The Council of Ontario Communities supports Bill 5, An Act to amend the Education Act. The council supports Bill 5 because it believes that half a loaf is better than none at all. The council also believes that heritage languages should be an integral part of the school system in Ontario. The minister, to his credit, has taken the important first step.

In demonstrating our support of Bill 5, the Council of Ontario Communities is also requesting the following: (1) that the council participate fully in the implementation of Bill 5; (2) that the organized community-based groups which comprise the council and the parents and school boards become equal partners in the process of realizing Bill 5; (3) that the organized community groups that I mentioned, parents in those communities and other interested Canadians make direct input to curriculum and staff development related to heritage languages in general; (4) that the Council of Ontario Communities participate in any temporary or permanent advisory committee(s) established to implement Bill 5; (5) that the council be invited as an equal partner during any future review of Bill 5, and (6) that school boards be allowed to extend the heritage-languages program beyond the two and a half hours a week where feasible.



1700

We have keenly followed the heritage-languages debates in the Legislature. We are particularly pleased with the positive approach all of you have taken with respect to the debate. We also welcome the specific positive comments made by you, the members, during this debate.

We are heartened by the growing realization in Ontario that heritage languages within the school system will help us derive the following benefits:

Teaching of heritage languages will help alleviate the burden of educators communicating with non-English-speaking children. Heritage-language resources and expertise will help improve the communication between educators and these children to whom English is a new and second language.

Integration of refugee and immigrant children in schools can be accelerated through the teaching of heritage languages. The shame and humiliation of culture or ancestry felt by immigrant children can be reduced. Their resentment of the dominant culture which wishes to accept them only as unilingual speakers of English will be diminished as heritage languages are recognized and appreciated.

Ontario will be poised to reap the benefits of globalized trade if Ontario's children are given opportunities to reach their full language potential. We hope that by the time Bill 5 is due for review the need to use heritage languages as languages of instruction will have been established.

I would like to quote Barry Steers, the Canadian ambassador to Japan, as I saw it in the Toronto Star of 7 June 1989, "The Canadian educational system is not teaching students enough about Japanese history, sociology or language in comparison with knowledge about other major countries." We think Barry Steers spoke for heritage languages in general when he was talking to the Toronto Star.

As I was leafing through the June issue of Scientific American this morning, the report of the Massachusetts Institute of Technology's Commission on America's Productivity and Competitiveness caught my eye. After a long and detailed study of America's competitive standing in the world, MIT's commission made five recommendations to the government and people of the United States of America. One of the five recommendations is that Americans must use their primary and secondary school systems to gain knowledge of other languages, customs and market tastes. MIT's commission believes that implementation of this particular recommendation in America would enable Americans to develop the international sensitivities required for success in the 21st century.

The challenge before us is not to extend a favour to children of linguistic minorities in Ontario; the challenge is to prepare Ontario's children for the future. Towards that end, the Council of Ontario Communities looks forward to working with you to use the school system to develop and position heritage languages as pillars of social and economic strength in Ontario and Canada.

God bless you all.

The Chairman: Thank you for your presentation. Before I go to other members of the committee, could you give us just a brief overview of your organization and whom you represent?

Mr. Ogbue: Yes. The organization was formed around the time you had a private member's bill, Bill 80 I believe, which addressed the same issue we are talking about today. It is really a coalition of all the existing community-based groups in Ontario, as I mentioned, ranging from communities that are predominantly German, Swiss, Italian, Korean, Chinese, Greek or Portuguese. Those are the kinds of communities that belong to this council.

Our particular interest is not only in education in general but in seeing that heritage languages, or languages other than English or French, are seen as two-way streets, as something that the members of the linguistic communities bring to the Canadian mosaic but something that other people can share too. We are not advocating that any programs be limited to us or to our children. We are saying, "Here is our gift to Canada, our gift to Ontario and we want to share it, just as we share English and French and all the other dominant cultures."

Mr. R. F. Johnston: In my speech in the Legislature, I re-read most of your presentations before the Bill 80 committee, and wonderfully articulate ones they were as well. You have not spent much time in this presentation making the arguments for heritage languages you felt compelled to do at that time, now that mandated programs are being proposed here, but I think most of you were here for the last presentation so I wanted to ask you a couple of questions coming out of that.

One of them is that the public board seems to continually refer to this as a continuing-education program and to do so in a clear secondary status kind of approach; that because it was a continuing-education program it should not be mandatory and that because it was a continuing-education program it was not of the same value within the system.

I remember a Dr Berryman who was before our committee around Bill 80 and he made the comment that as long as this stays a continuing-education issue and is seen to be a continuing-education issue, we will be fighting for the survival of heritage language and not its promotion. I wonder if you have any comments about that, given the limitations in Bill 5 around the status of heritage language.

Mr. Luczkiw: Before I answer the question, could I just make a comment about the last presentation that was made? There seemed to be, I think, a misconception about the mandating that this bill tries to propose. This bill in fact really does not mandate heritage languages. All it does is mandate the responsiveness of the boards to the parents' wishes. That is, there is no mandate telling the boards that they must introduce heritage-language programs whether the parents wish it or not. The bill merely states that the boards must be more responsive to the parents' wishes and the wishes of the students.

Clearly, if there is a demand by 25 or more students, the bill proposes that the boards cannot ignore the wishes of those parents or students, because as many of the boards already feel the benefits of the programs and know what the benefits are and have these programs under way—there is one board in particular, perhaps others as well, which does not feel the need to heed the constituents and the parents and the children, and I think there is a slight misconception that it is a mandating of the program. The program is in place; it is just the mandating of the responsiveness to the parents' wishes.

About the question that was mentioned, the continuing-education aspect of the program is clearly not acceptable as far as parents and even school

boards, I think, are concerned. As was mentioned earlier, there seemed to be a problem with having this program as a continuing-education program. The parents, I think, would not want it as a continuing-education program but would prefer an integrated program to give it full weight, the weight that it really deserves, because we cannot ignore or push away the realities of the needs of the students for the languages they speak to maintain their education.

The schools must be responsive not only to teaching the students but also to maintaining that which they already know. It is a real crime to have students lose knowledge or education that they already have when they come into the school system. The school should provide that not as an extra or an aside but right within the school system.

1710

Mr R. F. Johnston: This will be my last question, because I know other members will want to jump in --

Mrs Fung: By the way, Mr Johnston, you referred to me as, "Mr Fung." I am Mrs Muriel Fung, who presented 22 June 1987.

Mr R. F. Johnston: Did I do that? Oh, my God.

Mrs Fung: Will you please change that?

Mr R. F. Johnston: Call Hansard immediately.

Mrs Fung: That is very important to me. I came here with two purposes. My colleagues laugh at me of course because I mentioned that my two purposes are for a heritage language and to have my gender changed.

Mr R. F. Johnston: We will correct the record.

Mrs Fung: It is on page L-48. I make some specifications as to why heritage language should not be continuing education. If you refer to that documentation and want to have a copy, I have it here also.

Mr R. F. Johnston: I will try to correct my terrible error. There should be no confusion today one way or the other.

Since we are where we are on Bill 5--and I like the suggestions you are making for your involvement or the community's involvement with the implementation of Bill 5, the development of the regulations and curriculum, etc--and because it is still limited in terms of where it is going, I guess my question to you is twofold. What has been your involvement so far on Bill 5, and what do you think your continuing involvement should be in the evolution of the status of heritage language and language instruction?

You did not go maybe as far as I expected to see in terms of where heritage language should be evolving and what process should be developed with government on this.

Mr Luczkiw: I think there is no question, as far as the Council of Ontario Communities is concerned. They believe that the best way to provide education to the students as efficiently as possible is to have immersion programs where the students can not only learn the language but use the language they learn. We have had quite a bit of success already with the French immersion program. We see the benefits of this. There is no need to



have separate language classes when these language classes can be incorporated within the regular schoolday, while teaching regular subjects.

You can do twice the work with one class if you have that class learn, say, history, geography or some other subject in that language. It is extremely efficient. The additional cost is almost nil because you are still maintaining the subject matter and teaching the courses that you want to teach the students but at the same time they are also maintaining and developing their own language skills.

Mrs O'Neill: I am sorry, that last statement really took me by surprise. I think the fact that there is no further cost to immersion in many diverse languages in the school system would have to be researched. In any case, that is not what I wanted to say.

I wanted to ask the group whether it has become an advocacy group totally for heritage languages or, in the collegiality that you must have developed over the last couple of years, if you are doing some forms of research, professional development or curriculum-document development. I wondered if you had gotten to that stage in your organization's history.

Mr Luczkiw: First of all, if I could clarify our primary concern. There is a bit of a misnomer when you speak about heritage language. I think that is still a misconception which pervades many people's minds.

The Council of Ontario Communities is an Ontario council. It is not a heritage council where we want to maintain heritage languages, per se. We want to maintain the languages of Ontario. We feel that there are not one, two or three languages. Ontario citizens speak a number of languages. I believe over 62 heritage languages are already taught in the schools. There are more that are not taught at present in Ontario. These, we feel, are languages of Ontario. My languages are not just English and French or Ukrainian, but also all of the other languages spoken by the citizens of Ontario.

Perhaps at one time one would feel isolation without this multiculturalism aspect, pushing away newcomers and making them feel that their language and who they are are not part of Ontario, whereas the position, I believe, of Canada and Ontario is that every Ontario citizen is an equal partner, an equal person, an equal part of Ontario. As an equal part or person, a citizen in Ontario, the language of that citizen is a language of Ontario and the culture of that person is an Ontario culture.

Mrs O'Neill: I am sorry. I would like you to answer my question, if you could. Unfortunately, today we are talking about Bill 5, which is called "heritage language." I do understand what you have just said, however. Would you be able to answer the question I have posed?

Mr. Ogbue: I can answer your question. The resources available to these community organizations that comprise the Council of Ontario Communities are tremendous. Speaking for my small organization and the other ones I know, these communities have not only the resources to develop curriculum for these languages; they have actually in many instances been running the programs. They were probably running the programs before the school boards even woke up in these communities, so they have been involved in many aspects of curriculum development, training teachers and identifying resources.

These are the kinds of things the government can quite easily call upon and this is why we did not spend too much time dwelling on logistics. We think



that is a diversion. We wanted to address the policy issue. This government and the communities have enough resources that could be pulled together to get any results we want to accomplish with this bill.

Mrs. O'Neill: Thank you very much. So you are talking about a co-operative mode?

Mr. Ogbue: Exactly.

Mrs. Fung: May I also add that the Chinese community, particularly the Chinese Lingual-Cultural Centre of Canada, of which I am the president, also develops quite a lot of curriculum for teaching heritage language, so much so that I suppose now it is up to about 135 schools that have been using ours.

Mr. Jackson: Clearly you make a compelling argument with respect to the changing demographics of our province and the need to have that reflect some sort of commitment with respect to language. But I am having some difficulty in a couple of areas. I will start with a fundamental question.

In your recommendation 4, you state that you would like to "participate in any temporary or permanent advisory committee(s) established to implement Bill 5." Is a member of your council on the ministry's advisory committee? Who is that designated individual?

Mr. Ogbue: It is Erhardt Hoffman.

Mr. Jackson: To what extent have you been apprised by Mr. Hoffman of the committee's work to date?

Mr. Garzon: The committee has been working, has been sitting down at various times, according to what Mr Hoffman has told us. They keep us informed of all discussions they have had. I think Bill 5 is one of the consequences of that. They have been pulling out and gathering a lot of information for the advisory committee. Now, if you want me to go to the specifics, I cannot.

Mr. Jackson: I am just trying to understand, if in fact you are already on the committee, why you have suggested in recommendation 4 you would like to participate in the committee. Perhaps we are talking about two different committees.

Mr. Ogbue: No. We want to formalize it because, to our knowledge, some of the mechanisms and some of the interactions that have gone on to produce this bill, the draft and everything, we do not know to what extent—I think I mentioned in the beginning that we do not know if you have regulations all set up and to what extent it is, so we wanted to establish up front that if you have used advisory committees, which we think you have, and you have called members of different constituencies to participate, we want to continue to be part of it. If you want to reconstitute it in any way, we still want to be part of it.

1720

Mr. Jackson: Perhaps the parliamentary assistant would be able to clarify that point when we get some ministry feedback, but it underscores why I had requested to meet with the minister to get some of these foundation questions out of the way in terms of what was going on.

The second question I have has to do with Mr Luczkiw's concept of continuation. Clearly, this bill is confined to elementary education. Is it the council's short-term or long-term vision to provide these programs at the secondary level?

Mr Luczkiw: Yes. We believe it is almost inevitable. I do not believe the province can lag behind the developments that are taking place or have taken place already in the prairie provinces and the European Community.

Mr Jackson: Thank you. That answers my question.

Could I then move on to ask you, do you have any concerns with respect to the funding base, which is under a continuing education funding base? My understanding is that it is a flat rate across elementary and secondary. It may be adjusted, but I think under continuing education it is one rate, and yet the cost of delivering programs at the secondary and elementary levels are generally different, secondary being more expensive.

Do you not foresee difficulties with respect to the programs becoming more costly in a sense if it is moved into the secondary panel. Not to justify its existence; we know pedagogically that is a valued goal. When we developed immersion programs under the previous government, we had to look at catchment in the secondary. Otherwise, in those days it was six years of immersion that would have been lost unless we provided it at the secondary level.

Mr Luczkiw: As I mentioned earlier, we feel the proper place for such a program is not in continuing education but as part of the regular schoolday and within the regular program. There might be initial costs in beginning to implement these types of programs, but once the programs are under way, the cost is extremely minimal because you still will have only one teacher whether he teaches geography and—

Mr Jackson: That is integration as opposed to the other part of what I am referring to.

My last question has to do with the concept of representation and direct input into curriculum and staff developments and staffing. Again, I carry my old hat as a public school trustee, which helped form some very strong opinions about our responsibilities to spend what is an increasing proportion of local taxpayers' dollars and a smaller and smaller portion each year of provincial dollars. We have some previously very well defined responsibilities to groups that are not elected that come in to deal with matters of curriculum. For example, on French language, we developed a series of formalized committee structures with public elections, a certain degree of democratic status.

I think there has been some concern expressed about the fact that a parent with a child has less input when his child needs special education in this province, and yet I sense from your presentation that under heritage language you would expect—you request it in your brief—an even greater access to participate in decisions about curriculum and staffing, which a parent of a child in a regular classroom cannot get in this province.

Again, I am bringing this argument into the equation because I expect you to proceed and advocate on multiculturalism on the basis on which you are doing it. I have to step back and look at it from the point of view of what this means to the other children in the school in terms of this issue of advocating from a parent's point of view. Clearly, you are getting a bit of a

leg up, in a sense, in terms of the third-language agenda, versus a parent who is struggling to ensure that his child does not get streamed into a vocational school or whatever by virtue of his inability to directly affect the educational needs of his child. I am having great internal difficulties with that question.

My question is, give us a sense of where you feel your role should be or could be in terms of your ability to influence school boards on the decisions of staffing, curriculum, transportation and matters of this nature.

Mr Luczkiw, you were very clear in indicating that this is not mandatory; it is just forcing the school boards to listen to the wishes of parents. That statement quite frankly concerned me a little. What is the shape of that relationship that you see developing? I am a little nervous about the range of opportunities that have been provided in the past in education and what may be developing for the multicultural community as a result of mandatory third-language instruction. Do you understand the nature of my question?

Mr Garzon: Yes, I do.

Mr Jackson: Very good.

Mr Garzon: One thing we have studied, and it is not new, is that we went to the third languages report on the Toronto Board of Education. We had the opportunity; I am one of the members. One of the things we did was to go to Edmonton to see how they work with these bilingual and trilingual schools. They do guide the parents. The board of education has a good understanding with the parents of certain languages, Ukrainian, German, Jewish and so on, and had those who arrange the things and tell the board what they want or how they want to do it.

I know that when we talk about education, immediately, before we have defined what is education—I am going to get back to you on that specific question. I would like to add something. I feel that at least at Queen's Park people still start grabbing the whole idea and concept that education is everything. We still hear some presentations here from some trustees and other boards saying: "This is heritage language. It is not education. Our education, our needs, are here, but that is another thing."

I do not think that. I think education is a whole thing and included in that education is language. What you teach with the language is in the brain and the brain absorbs it and knows things for that purpose.

When you come to this, how we are going to do that, I think we cannot do by mandate that they are going to do that. The parents and the community have to go to the board and say, "Listen, we would like to do the transportation in that way." I do not think that across the board, for all the languages, right away here in Toronto, more specifically in the whole province of Ontario, they are going to say, "Right now, everybody can have their education in Spanish or Chinese and English," and so on. No; I think it is a long process, but we are in this process. Without the parents committing themselves to do that, it will be impossible.

Mr Ogbue: Excuse me. I would like to just throw out a few more words on what he said.

The Chairman: There are two other committee members who would like to ask questions.

Mr Ogbue: I will be very brief.

The Chairman: Okay.

Mr Ogbue: I am talking from the standpoint of my own community of probably fewer than 5,000 in Metropolitan Toronto. We have been running a successful heritage languages program for four years now, in co-operation with the North York Board of Education. How did we do it? We did it by sharing resources.

A classic example was when we were looking for educational material for heritage language. Recommendations ranged from calling a consultant to travelling to Africa to get all the materials we needed, texts and things, or going to the community, talking to the teachers of that community and to the parents who participate in cultural activities. Within a month, we got a library full of books and materials. What we are talking about here is the concept of sharing ideas, sharing resources and sharing the thrust for the program.

The Chairman: That sounds very interesting.

Mr Allen: I appreciate the council's presentation. I think you know I am an enthusiastic supporter of the perspective you bring to this particular subject.

I just want to ask you, since time is running short, a very brief question about item 6 in your recommendations. I wonder whether you have any sense of the possibilities of securing some extension of the allocation of two-and-a-half hours a week in terms of the discussions you had with the ministry and others.

I think expanding is important from the point of view of the ability to develop some experimental space and room around being able to operate a number of modes and varieties in order to test out what works best. I think that is a very important recommendation and I wonder what sense you have of the state of the ministry's view on that particular question.

1730

Mr Garzon: To do generalities is extremely difficult in that case because everybody at school has his own makeup; every community and every language. For instance, if I speak for the Spanish heritage language, you can imagine that 60 per cent of the students in our programs are not from a Spanish background. It makes it very, very difficult to do that.

One of the things we have discussed lately is that we would like to move, for instance, that one day of the week could be dedicated to teaching the language or teaching something in the language. For instance, for the whole of Friday we could be teaching a subject in that language, whether it is Chinese or Spanish—it depends on the school—instead of having 40 or 45 minutes to cover the two-and-a-half hours.

That is why it is some kind of indication if we can move from two-and-a-half hours to five hours. Once we have a set of concepts of education with a language, any part of the curriculum the students are



learning now in English or French could be taught in any language. We move from that aspect and we put aside Monday, Friday or any day for teaching that subject in the language.

Mr Beer: I will be very brief because of the time, but I would like to make more of a comment perhaps. I found your explanation of how you developed the program in North York to be very illustrative of that co-operative model. I think that is terribly important for two reasons.

The first is that I think it produces a better program; the community is involved. I would certainly say in terms of the government's ongoing work in this area, that clearly we have to do it in a consultative process. The other reason it is important, though, for those of you coming before us and wanting to see this program go forward, is that it is incumbent on us as well to continue to underline that this is a question in an area that is still misunderstood in many parts of the province.

I as a legislator, and yourselves individually when you are out in different areas, must try to deal with some of the misconceptions people have, the concerns that somehow we will no longer be Canadian, that any sort of sense of identity will go away in a kind of tower of Babel. When people actually come and see the program in North York or wherever and see how it is developed, I think that immediately allows people to see that these are Canadians who are developing this program and that this is part of who we are.

I think that as we proceed and this concept develops, there are perhaps different way stations along the road and we must never forget the need to talk with our fellow Canadians, our fellow Ontarians, about the intent of the program and where we see it ultimately leading us.

I appreciate your presentation. I did want to underline that this kind of program can only develop in a co-operative model. Thank you.

The Chairman: Okay. On behalf of the committee, I want to thank you very much for coming before the committee and sharing your views on this important subject, and also for co-operating in reducing the amount of time you had originally been allocated because we have two other groups we are trying to fit in yet today. Thank you for coming.

Members of the committee, we have two other groups and we will allocate them about 15 minutes each. Luke Tao, representing the Federation of Chinese Canadians in Scarborough, by agreement is going first. Welcome to the committee, Mr Tao.

#### FEDERATION OF CHINESE CANADIANS IN SCARBOROUGH

Mr Tao: My name is Luke Tao, representing the Federation of Chinese Canadians in Scarborough. I have not prepared myself as much as the previous group, so I do not have extra copies for you to review. I hope it is okay.

The Chairman: If you leave it with us, we can have copies made and circulated to the committee later.

Mr Tao: Okay. Yes, we can do that.

The Chairman: When you are done.

Mr Tao: That is my only copy.

The Chairman: No, I meant when you are done.

Mr Tao: Okay. Good.

First of all, I want to express my appreciation and my excitement about the heritage-languages program which will soon be the reality, particularly in the Scarborough Board of Education.

I would like to commend the Ontario government for its initiatives, particularly the Honourable Christopher Ward, Minister of Education, and the Honourable Gerry Phillips, Minister of Citizenship. I also want to acknowledge the Progressive Conservative Party, which started the program in the school system on a voluntary basis more than 10 years ago, and the New Democratic Party, whose advocacy role of the heritage-languages program has been very effective and amiable.

Mr Jackson: You do not want to throw in anything about the previous government? Then you will have pleased everybody at the table.

Mr Tao: That is as far as I go.

Mr R. F. Johnston: He keeps forgetting he is a Conservative.

Mr Jackson: It is from sitting so close to him.

Mr Tao: What I am trying to do is cover all grounds here.

Our federation has been one of the key members in spearheading the implementation of the heritage-languages program in Scarborough. Despite growing support from over 70 community groups and organizations such as the community associations, the parent-teacher associations, the primary schoolteachers' federation, the secondary schoolteachers' federation and the primary school principals' association in Scarborough, just to mention a few, the Scarborough Board of Education remains insensitive to the legitimate concerns of the multicultural community.

Our federation, together with the multicultural community, appealed to the Premier of Ontario, David Peterson, to take intervention to rectify this gross injustice when the Scarborough Board of Education once again rejected the heritage-languages program on 17 September 1987.

I truly believe that legislating heritage-languages programs in schools of Ontario legitimizes the rights of the multicultural community in the retention of its cultural heritage. It brings the federal and provincial governments' policy of multiculturalism a step closer to reality. As the policy says, "No culture is official or dominant; instead, all cultural groups are seen as contributing to building the Canadian society."

Within the framework of education, heritage-languages programs satisfy some of the goals of education which were set forth by Ontario. They are: develop a feeling of self-worth; develop an understanding of the role of the individual within the family and the role of the family within society, and develop esteem for the customs, cultures and beliefs of a wide variety of society groups.

I cannot be in a better position to talk to you about two of my children, who are trilingual. They are fluent in English, French and Chinese. They have been taking heritage-languages programs since grade 1 and both of

them are among the top students in their classes. With a strong sense of cultural identity, my children are found to have a better chance of reaching their full potential and of achieving academic success.

I want to stress that learning their own heritage does not make my children less Canadian, as they are encouraged to enrich Canadian society by contributing to develop their unique culture.

At a time when society is increasingly concerned with generation and cultural gaps, heritage-languages programs will facilitate communication and understanding between the parents and children. In the eyes of a child, the teacher and the school often symbolize the accepted norm in a society.

When the home culture is being recognized by the school in the form of heritage-languages programs, it helps to resolve the inner conflict in the child and helps promote harmony between the school and the home culture. It is particularly for this reason that the heritage-languages program should be a joint effort between the home and the school.

1740

The heritage-languages program would also have definite advantages over some community-based heritage classes as follows:

1. The curriculum of the program would be consistent across the board under the ministry guidelines, also minimizing the duplicate effort in material developments.
2. There would be a stability and consistency in program operation within a school board as well as throughout Ontario.
3. The school board would be placed in an active and responsive role in contributing to Canada's multiculturalism.
4. The multicultural community would become more involved in the total life of the school.
5. Last but not least, such a program will represent compatibility between the home and the school, as well as co-operation between parents and the school in education of the children.

In summary, the Federation of Chinese Canadians in Scarborough wholeheartedly supports the ministry's effort to legislate the heritage-languages program and we look forward to working and co-operating with the school board and the ministry in that regard.

I just want to make two points at the end here, as a suggestion. One is that, as you may be aware, Dianne Williams, the chairperson of the Scarborough Board of Education, has charged that the ministry is taking away the authority of the local school board and stifling the voices who want to protest actions.

I understand that the bill is very simple and does not even mention the words "heritage-languages program" themselves. I wonder if there is anything that can alleviate that confusion, by including something specific at least to avoid some kind of excuse or reason from a school board like Scarborough for trying to make another blockade in the last efforts.

The other point that we as a community group have been fighting the

heritage-languages program for the last many years in Scarborough—and one of the things that we propose and that in fact was also proposed by the policy advisory committee on multiculturalism and race relations of the Scarborough Board of Education—is that the black cultural heritage program was mentioned as part and parcel of the heritage-languages program.

In fact, the black community has been very active. They see themselves as having some similar needs, except that they do not have a language as such to retain their heritage, but rather a black cultural studies program would be very suitable, and I think that will really provide a similar effect to that particular cultural group.

That is one of the suggestions that I would like to make as a consideration in the bill. I thank you for your attention.

The Chairman: Thank you, Mr Tao. Mr Johnston, you have a question.

Mr R. F. Johnston: I wanted to commend Luke, who is commending the rest of us for our roles. The federation to which he belongs is probably the most dynamic group that I know of in Scarborough and it has made a huge difference in the battle on this matter, which I have been involved with since 1981. I know that since the federation got involved, we have come closer to winning it in Scarborough than we have ever done before.

I wonder if the parliamentary assistant can help us with this matter in terms of the two things that Luke just raised at the end. Is it possible that the Scarborough board could exclude a black cultural studies program as part of heritage languages if there was no particular specific language involved, or would it be—

Mr Beer: I think the bill speaks to the question of language. That is what we are addressing and that is what the regulations are addressing. I think any board is free to offer different programs around culture and might wish to do so. But the bill and what is being done here does speak to language, so I think that is the focus.

There is another issue around groups whose first language or the language that is used is English or French in terms of the culture, but I think it is important to recognize and I think we have to be clear that this bill does speak to language, not to culture apart from that.

Could I just add one point in terms of your other question? I think that our belief is that this is an act. It will become law upon passage, and in our view, all of the boards will work then with us to ensure that the terms of the law can be carried out in a fair and equitable manner. We believe that once this is passed and does become a mandatory program where, as the regulations set out, 25 parents come forward, then the requested program will be provided.

Mr Tao: So the regulation and guideline will come later with the joint effort with the school board, in terms of implementing the program?

Mr Beer: I think it is our belief, and we go forward on that basis, that all of the school boards will adhere to the law, that the various steps will be set out quite clearly and that, as with other board areas, those programs will be offered. We do not anticipate any problems with that.

Mr Tao: I wonder if I may respond to the words "heritage language." I recognize that the bill is specific on language itself. However, I think for



a heritage-language program to state as a concept the importance of the program—actually, probably to a lot of parents the cultural heritage is even more so than the actual linguistic part of it—means the cultural part is as important, if not more so.

If it is not included in this bill, I wonder whether it can be a consideration in the future, in light of the fact that a large community, the black community, would be very keen to learn and retain a similar kind of program for the black culture.

Mr Beer: I think that in terms of culture and those programs there is, as you are aware, work that is being carried out in terms of instructing on the issue of whether it is black studies or other programs that can be in the regular school program. Those programs are evolving and developing.

I think it is when you are trying to focus on a particular issue, which in this case has been language, and as we approach all the questions around multiracism and interracial questions, there is a need to improve a great deal of what we do in terms of cultural programs.

For example, within the black community there are different groups, and in terms of some of those communities, there are of course languages that are not English and those would be able to come forward in a similar fashion as other languages.

But I think it is important that we understand at this point, with the bill and the program, that it is a language-based program and that the way we have been approaching other cultural studies and history is to try to incorporate those more broadly into the school program.

I appreciate the point that you have made and I think that, as we have stated in moving forward with this program, it is one that will be reviewed, and as other needs come forward we will have to look at it.

The Chairman: Mr Tao, on behalf of the committee, I want to thank you for coming here this afternoon and sharing your views with us.

Our next presentation is from Mr Gupta, on behalf of the Multicultural and Race Relations Committee of Human Services of Scarborough. We have just under 15 minutes left before our time expires.

1750

#### MULTICULTURAL AND RACE RELATIONS COMMITTEE OF HUMAN SERVICES OF SCARBOROUGH

Mr Gupta: Good evening to all the members of the committee. As was pointed out, I represent the Multicultural and Race Relations Committee of Human Services in Scarborough.

We have been fighting this issue for over 10 years now with the Scarborough Board of Education, which is I think unique in its own way in representing that these languages should not be taught, which I suppose everybody will know too. Luke Tao, my predecessor, did a lot of work in this connection and we have been and are still trying to do what we can.

I want to make a few general points before I come to some specific things. We all recognize that Canada is a multicultural country and that both

the federal and the provincial governments have ministries of multiculturalism. I think you all recognize that the composition of population in Canada has recently been changing very rapidly, especially in Ontario and more particularly in Metropolitan Toronto, where we estimate that about 50 to 60 per cent of the people are of ethnic origin. That means people whose mother tongue is other than English or French. We estimate about 25 per cent of those people are from visible minorities who come from Asia, India, South America and so on, or from the Middle East.

It is common knowledge that this population has its own distinct heritage. It has its own culture, whether it is European or Asian or Middle Eastern or South American. I think we, as parents, are concerned that our children should not completely lose sight of their culture. We are trying to bring them up to our culture or our heritage and it is only fair that such a large number of people, in Metropolitan Toronto especially, as I pointed out, should not have their heritage languages ignored. Their heritage should be emphasized.

I want to congratulate the Ontario government that much is already being done and this legislation is being passed, but there are a few roadblocks that are always coming in.

It has been said many times by the Scarborough Board of Education especially, "We can't afford to pay this money for these heritage languages; we don't have the funds." They seem to forget that 60 per cent of these people who are there in Scarborough or in Metropolitan Toronto are taxpayers. They own homes, they have businesses, they own factories and they are professionals or working otherwise and they are contributing, and they are young people, so they are contributing a large amount of taxes to the provincial Treasury, to the federal government and to the municipal government. It is only fair that their views or their demands should be considered by the people who are in power, who are making the laws and making the rules and regulations.

I think if you go to a classroom today, you will find 50 to 60 per cent of the schoolchildren are of other races or other heritage languages. They speak a language other than English and French, whereas of course most of the teachers are still, unfortunately, of Anglo-Saxon origin, the majority of them, anyway. I think that is one other point that should be considered later on, although it does not concern this committee at the present moment.

Most of the boards of education have recognized heritage languages and they are already being taught, I think in North York, in the Toronto board and elsewhere, even outside Metropolitan Toronto.

But as we are all aware, in Scarborough it is quite a different picture. We have been making all kinds of representations to them at various levels, for years. Mr Johnston is quite aware of what happened two years ago, but we have not been able to convince them that it is necessary. Now we have also made representation to the Ontario government and, fortunately, now the legislation is going to be passed and this is going to be considered.

As recently as 17 May, Dianne Williams, our chairman came out and she said, "'Ontario is stifling heritage debate,' board charges," and she made a lot of statements which appeared in the press.

We also gave a press release after that saying that what she was saying was not true. One of the points that Miss Williams has been making is that the minister is taking over the authority of the locally elected school boards. We

have pointed out to her that under the Education Act, the local school boards have certain powers, and they are certainly elected people, but for example, if the local school board decided, "We will not teach mathematics" or "We will abolish such-and-such languages" or whatever they wanted to do, that would not be fair and that would not be their mandate.

Their mandate is given in the framework of the Education Act and the curriculum prescribed by the Ministry of Education. They do not seem to understand that; they seem to think we have got completely independent power to do whatever we want. I would like to bring to your notice that this is most unfair and they do not seem to understand what we are trying to say.

The other thing I would like to point out is that this bill, if I have the correct copy, says here "requiring boards to offer programs that deal with languages other than English or French." I would like to put in the words "heritage languages." That would then say "requiring boards to offer heritage-language programs." I would like to see, if it is possible, something mentioned about the cost of these programs, how it should be borne or what should be done about it.

I understand in North York a large number of heritage-language classes in Hebrew are already being taught, about 192 or something like that, and these are already being paid for by the local people. I would like to see that these schools should not be funded. If they are in private schools, then heritage languages are already being taught and I do not think it is necessary for the provincial government to ask the taxpayer to pay this bill. I was of the opinion that the heritage languages which are being taught or will be taught in public schools, where 25 students require or request teaching of those languages, should be funded from the public funds.

The Chairman: There are only six minutes left and there may be one or two questions.

Mr Gupta: All right, I shall stop here. I have a small pile of press releases that we gave out a few days ago. I will give you a copy of that.

I will answer any questions.

Mr Beer: I would like to comment on and perhaps clarify the point about the private school program. I know there was an editorial yesterday in the Toronto Star, I think, which was not exactly correct in its interpretation of what was happening.

I think we want to be very clear here that the legislation and the regulations are for the development of heritage-language programs by public or separate boards. Students who attend private schools and whose parents obviously pay taxes have a right, along with anyone else, to participate in those programs. It is up to the boards to determine where they wish to put the programs on, in what locations and at what time. The majority of those programs are usually done in school settings, although there are some in community settings, but any program must be accessible to all of the students in that board area so that there is no funding of private schools to offer heritage programs. The statement in the newspaper was not correct.

The way the program functions is that the public board or the separate board will set that program up to ensure that those who wish to attend may attend, but under their direction and authorization. So in fact there is not money going somewhere else that could be used. These are public dollars being used for public purposes.

Mr R. F. Johnston: I want to wish Mr Gupta good luck with his meeting with Mrs Williams which I gather is coming up very shortly. I convey to her from us here at the Legislature that we have every hope that this bill will have third reading and royal assent before 30 June and therefore, that this fall, for the first time in history, Scarborough will be operating these programs. We encourage her to co-operate with you and your committee on this matter in the next little while so that that can be done smoothly.

Just parenthetically, I would say to the parliamentary assistant that this may not seem like the thin edge of the wedge to him in terms of funding to private schools, but that this is a fairly unique formula that has been developed which does not apply to learning-disabled children, for instance, whose costs and rights to assistance might be picked up by a local public board and operated through the private school system. Some of us look on it with a little more trepidation than clearly the parliamentary assistant does in terms of the whole notion of funding towards private schools.

The Chairman: Mr Gupta, you have a minute or two left. Would you like to add any comments in conclusion?

Mr Gupta: I would like to thank Mr Johnston because I know he has been supporting us greatly for years. We are very grateful to him and of course we are grateful to the committee that this decision is finally being brought in. It will ensure, I think, a new era in Ontario where we can proudly say, "Look, our heritage languages are going to be taught in the school system now."

The Chairman: Thank you very much for coming today and sharing your views and those of your association with us.

Members of the committee would also like to express appreciation to Mr Jackson for indicating his support for our carrying on in his absence this afternoon. It has allowed us to complete our agenda today as planned.

If there is no further business, the committee stands adjourned until Monday, when we will resume these hearings.

The committee adjourned at 1800.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT, 1989

MONDAY, 19 JUNE 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Daigeler, Hans (Nepean L)  
Jackson, Cameron (Burlington South PC)  
Johnston, Richard F. (Scarborough West NDP)  
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Poole, Dianne (Eglinton L)

Substitutions:

Bossy, Maurice L. (Chatham-Kent L) for Mrs O'Neill  
Adams, Peter (Peterborough L) for Mr Daigeler

Clerk: Decker, Todd

Clerk pro tem: Manikel, Tannis

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Federation of Home and School Associations, Inc:  
Bawden, Mary, Past President  
Obeda, Marian, Legislation Action Chairman

Individual Presentation:

Derstine, Clay

From the National Congress of Italian-Canadians, Toronto District:  
Grande, Dr Gregory, President  
Marchese, Rosario, Trustee, Toronto Board of Education  
Ricci-Tullo, Vilma

From the Toronto Board of Education:

Silipo, Tony, Chairman

From the Toronto Chinese Parents Association:

Ng, Stella

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 19 June 1989

The committee met at 1532 in room 151.

EDUCATION AMENDMENT ACT, 1989

Consideration of Bill 5, An Act to amend the Education Act.  
(continued)

The Chairman: The meeting will come to order. This is a meeting of the standing committee on social development convened to consider Bill 5, An Act to amend the Education Act, with respect to heritage language.

Today we will be holding hearings. Our first delegation is the Ontario Federation of Home and School Associations. Representing that organization is Mary Bawden, past president and bulletin editor, and Marian Obeda, legislative action chairman. Please take the chairs opposite.

The two opposition critics have indicated their permission for us to proceed in their absence. We will do so because we have quite a full agenda this afternoon and we will try to get all the delegations in before 6 o'clock.

Welcome to the committee. You have half an hour for your presentation. That includes presentation and questions. Some members of the committee may have questions.

ONTARIO FEDERATION OF HOME AND SCHOOL ASSOCIATIONS, INC

Mrs Bawden: You handled our names well. I am Mary Bawden, the past president and bulletiner chairman of the federation. I would like to thank you very much for the opportunity to speak to you on behalf of the federation today.

I would also like to express regrets from our president, Jan Purvis, who had a commitment which would not allow her to be here, but she was happy to send us. I should say for Hansard that with me is Marian Obeda, the legislative action chairman of the federation.

You have copies of our brief. As usual, we have started out with our home and school overview which gives new members a chance to orient our organization somewhat. I will start on page 1.

On behalf of the Ontario Federation of Home and School Associations, we would like to thank the social development committee of the Ontario Legislature for the opportunity to present our concerns and recommendations regarding Bill 5, An Act to amend the Education Act.

We believe that Ontario's publicly funded education system is one of the finest in the world. It must constantly be examined, evaluated and updated. Great care must be taken to ensure that when changes are implemented, the system is not weakened and fragmented. Like all democratic institutions, education can be subjected to human weakness and error. That is the very nature of society, and the society of the future is in school today.



The government of Ontario has a responsibility to ensure that all the citizens of Ontario will always have the very best educational opportunities available and freely accessible for all children, at the lowest possible cost to the taxpayer.

Members of the Ontario Federation of Home and School Associations adopted a resolution, as follows: "That the Minister of Education require all school boards to make their prime objective the effective teaching of basic learning skills."

At the fall 1988 board of directors' meeting of the Ontario federation, the board adopted the following recommendation: "That the province of Ontario provide the best educational opportunities for every student, regardless of any student's socioeconomic environment, and limited only by the expectations and the abilities of the student."

Perhaps I should add that that came about as a result of our studying the goals of education for the select committee.

On 22 October 1988, the Honourable Chris Ward, Minister of Education, announced the government's intention to introduce this legislation, Bill 5, to provide heritage-languages programs. In that announcement he stated:

"Today, as Minister of Education, I'm making a major commitment to guarantee access to heritage-languages programs and to provide the resources to make those programs work.

"Effective in September of 1989, Ontario school boards will be required to provide heritage-languages classes when a request to teach a particular language is made by the parents of 25 or more students of that board.

"A board may offer heritage-languages classes itself or make arrangements with another board.

"The classes may be offered after school, in the evenings, on weekends or through an extended day program.

"Public school students will be permitted to attend heritage-languages classes offered by another public school board; separate school students will be able to attend classes offered by another separate school board. Other special arrangements may continue to be made between public and separate boards.

"These measures are designed to fulfil this government's commitment to ensure access and participation for elementary students whose parents wish to provide for their children an opportunity to learn a heritage language."

Mrs Obeda: We agree with the criteria which Mr Ward listed above and later we will make a recommendation regarding these criteria.

In our 1987 response to Bill 80, we expressed concerns about overcrowded curriculum, classroom disruption and costs and we are repeating those concerns here today.

Overcrowded curriculum: Demands on our education system to ensure a highly educated workforce, coupled with demands from society, have strained school curriculum to the limit. Heritage-language classes offered after school and on Saturday could enrich rather than take away from the educational

opportunities for students. It is unacceptable to add numerous heritage-language classes to the regular school hours.

Classroom disruption: Heritage-language classes offered during school hours disrupt students, teachers and timetables. This disruption can cause classes and schools to become nonproductive for everyone involved. Students of different heritage backgrounds may be withdrawn from class at different times throughout the schoolday. In fact, it could be possible for a teacher not to have a full class all day.

When small numbers of students are removed from a classroom for a short period of time on a regular basis, those children may be singled out as different by their peers. These students will miss some instruction. They could be missing basic instruction in a subject area where they have a weakness and already need extra help and support.

Members of the Ontario Federation of Home and School Associations are aware that in certain large urban school boards it has been possible to provide heritage-languages programs during an extended schoolday. However, we are also aware that Bill 5 will affect all school boards, school boards that serve very diverse communities and vastly different numbers of students.

We feel that it is important that additions be made to Bill 5 to ensure that the minister's criteria, set out on 22 October 1988, will be included in the Education Act.

#### 1540

The following additions to Bill 5 are recommended:

1. Heritage-languages classes will be provided by a board when requested by the parents of 25 or more students of that board.

2. The classes may be offered after school, in the evenings, on weekends or through an extended day program.

3. A board may make arrangements with another board or a coterminous Roman Catholic separate school board to provide heritage-languages courses.

Cost: It is of serious concern that every additional responsibility that is legislated into Ontario schools carries with it additional costs for administration and services. While these costs are very necessary for the successful implementation of any program, they must not be covered by taking support from existing classroom budgets.

Members of the Ontario Federation of Home and School Associations would like to be assured that adequate funding for education is maintained. There are fewer taxpayers with children in school. Rising costs, a troubled economy and unemployment are placing increased demands on the available tax dollars. It is recommended that the Ontario government accept financial responsibility for legislative changes to the publicly funded school systems by increasing and maintaining its financial commitment to the education budget.

Mrs Bawden: Our next page is simply a summary of the recommendations to make it easier for everyone to really see them. We have not written a conclusion, but I think our conclusion basically should express a concern for the vast number of differences there are in the communities school boards have to serve and the numbers of students they serve as well. We feel that the

criteria which are spelled out for Bill 5 in Mr Ward's statement do protect those communities somewhat in their ability to provide and have some diversity in the program.

I would like to thank you again for having us here to present to you today.

The Chairman: Thank you very much for your presentation. We value the input of the Ontario Federation of Home and School Associations, and I am pleased that you have left some time for questions from members of our committee. I will start with Mr Jackson.

Mr Jackson: With the indulgence of the delegates from the Ontario Federation of Home and School Associations, I wish to raise a point with you, Mr Chairman, about a scheduling matter for this committee, to advise members of the committee that both opposition parties are unable to participate in these hearings for a time because of scheduling matters. I would like that for the record. I would also like the chairman to investigate why that has happened.

In particular, it was this committee's activity which developed the public hearings and now, as we speak, Bill 124, the Children's Law Reform Act, is being debated for third and final reading, where all opposition members from this committee are participating in that most important debate and vote. We were advised that there was a briefing this afternoon at 3:30 for Bill 211 when we conduct public hearings on that bill tomorrow.

In advance of tomorrow's meeting, members of this committee apparently were invited to attend that. Now we have these public hearings and obviously there is a problem with scheduling. The member for London North (Mrs Cunningham) is now speaking. I have to relieve her and speak as well on the bill, as do Mr Johnston and the other New Democratic Party member.

I wish to apologize to the groups that this has happened, but I do not feel that we have responsibility for it. I would ask you as chairman and the clerk of the committee to examine why that has happened and if we cannot better co-ordinate the House and committee time to ensure this does not happen.

The group before us has come a considerable distance to make a presentation. I personally referenced their resolutions in my statements in the House on Bill 5. I have a series of important questions to ask them. They are left here to talk to a group of Liberal members who have indicated their unwillingness to amend the bill.

That is a statement. We are very upset about it. If this process of governing is to work fairly, it is important that committees in the public hearings process be conducted in a manner in which all groups are given proper access. That should start with legislators who hopefully are here to listen and to be able to respond to these important issues.

I want to leave that as notice, Mr Chairman, and perhaps you could examine how that happened and you could better co-ordinate with the House leader to make sure that there is not a conflict for key members of this committee with specific legislation that would be in the House. I apologize for having to raise this during your important time frame.

The Chairman: I will take notice of your comments. As chairman of the committee, fairness is one of my prime concerns and I will look into the matter.

All I can say is that the scheduling of this committee was done by the subcommittee. I will check into the other two matters that you raised. Did you have some questions that you wished to pose to the delegation?

Mr Jackson: Yes, if I could briefly. I would like to ask at the outset if there is any concern expressed about the range of program offering in terms of the age of the children who might participate in any given classroom and/or the qualifications of teachers when it is not abundantly clear on what basis qualifications will be determined for the instruction.

Mrs Bawden: I think the impression that I had during the time that the announcement was being made was that these would be continuing education teachers who are not necessarily certified classroom teachers but they would have to be proficient in the language that they were offering.

Mr Jackson: I notice in your brief you make a reference to the fact that the government is guaranteeing the program but not the funding. Has your group, by resolution, expressed any concerns about the fact that the bill does not set out the funding arrangement?

It is covered in regulation, but in fact the government could say in its sixth year, "That's it. You are on your own for these programs," and it would fall almost entirely on the backs of residential property taxpayers. School boards would then have the unenviable task of cutting certain programs over others, as they have in the last few years, in order to meet their budget commitments.

Mrs Bawden: I think we pulled this document together pretty quickly, but that is indeed the intent of our last recommendation. It is not just for initiating but for ongoing.

I was looking at this last night and wondering whether we had made a very clear statement and I do not think we have, totally. The intent is for increasing and maintaining its financial commitment to education and that certainly is intended to mean on an ongoing basis, not just for the five-year and the three-year period for which it discussed incentives.

Mr Jackson: Finally, I want to ask you a question with respect to participation. The minister in public statements has referenced advisory councils made up of community groups which will help to make determinations for school boards about curriculum and staffing. That seems to me to be a unique set of circumstances. We have a parallel with French-language instruction in Ontario, and that is very clearly set out in legislation because they are dealing with considerable amounts of public dollars. There is even representation on boards to reflect that.

Usually your organization is called upon to provide elements of public input as to what school boards are doing. Do you have any concerns with respect to the very unclear nature of these advisory groups, what authority they might have and impact they may create on school board budgets because of this mandatory program, with unelected people coming in and determining how those resources are spent?

That is a very unique thing to education, as I see it, something we have not really come up against before. Even for children under special education legislation, the parents do not have that kind of right that it appears that heritage-language groups will be gaining in this province. Do you share those kind of concerns?



1550

Mrs Bawden: I think I would be concerned that a board might have to deal with so many different advisory committees that it could be meeting almost 24 hours a day with them. Yet I see the need for some input from the community group or from someone as to the adequacy of the presentation and the language it is offering to the students. I think it is something that requires an awful lot of refining. Probably the reason it is in a vague situation is that it could be almost impossible in some cases to develop adequate representation.

Mr Jackson: Thank you very much. As I have mentioned earlier, the deputants have come a considerable distance today to make their presentation and I, for one, appreciate very much having received your brief. I, too, hope that when the minister comes before us to respond, he will be aware that you share that concern about what the actual nature of the relationship with these advisory groups, school boards and taxpayers' money is, and just exactly what the government envisaged, which is what it seems to have condensed into one simple line in an act.

Mr Beer: It is a pleasure for me to see you again. I enjoyed our meeting earlier this year at your annual convention. Also, thank you for the time in developing your paper and setting out the comments of the home and school association.

Just one question at the beginning. I believe there are three representatives from your association on the provincial advisory committee. In terms of the committees that might be established at the local level, my understanding too is that the intent there is that they would not be mandatory and that it would be one committee, because I think, as you mentioned, there was concern about how one might proceed if one had to develop a committee around each language group. I think there is a sense of trying to go at this in a fairly commonsense manner and not in effect developing so many mechanisms that trustees are spending all of their time at meetings rather than doing. So I think that point you made is well taken.

Specifically with respect to the recommendations, I wonder if I could just ask about the three points you set out in terms of the following additions to Bill 5, which you recommend. As you know, the bill itself is obviously a very simple one which just says, "requiring boards to offer programs that deal with languages other than English or French and governing the establishment and operation of such programs."

In the synopsis the ministry passed out at the time the bill came in, it seems to me that those regulations in effect would cover the three points you have set out here. In the regulations there is just one point I will make with respect to number one; but in terms of dealing with two and three, first of all, that the classes would be offered after school, in the evenings, on weekends or through an extended day program, in point of fact that is and will be the case. A board may make arrangements with another board or a coterminous Roman Catholic separate school board. Certainly, where programs are in existence there has been a good bit of discussion on, "Why not share and work together on those?" I think those are covered.

With respect to your first point regarding the parents—and you have noted parents of 25 or more students of that board—I guess the regulation will say that any public taxpayer is eligible to have his or her student attend. I do not think that changes the meaning of what you have set out

there, but those three in essence would be covered—you can see when the final regulations are drafted—and I think provide some of the protection, if you like, that you were looking for in those remarks. Have you had a chance to look at that synopsis of the regulations?

Mrs Bawden: I do have some background material, but I was not sure this was the information that was about to be enshrined in the regulations. So I did not feel we had access to anything other than the minister's statement regarding the regulations.

One of the reasons for our concern with the evenings and weekends is that that would allow students from private schools to participate in these, and what you just said would—

Mr Beer: But that, though, is in the guise that where their parents are paying—

Mrs Bawden: They are public school taxpayers.

Mr Beer: Yes, so they would be eligible to participate in a program on a Saturday or after school or whatever. But the key in the regulations is that any program which is established must be accessible to all of the pupils, so you have to ensure that that program is being held at a time and a place which will allow those children to participate.

I hope that when you see the regulations they will cover those points you have made in your brief. I think the first two points you make—effective teaching of basic learning skills and educational opportunities—would certainly be ones, I would hope, that flow from the goals of education and that we would agree to.

In a broader sense, in terms of your association, have you discussed at all the impact of these programs and how parents feel about these programs in those areas where your membership has experience of them? Has there been any kind of workshop at one of your annual meetings or any particular in-depth look at, say, how these programs function in some of the large urban centres where they are in existence?

Mrs Bawden: We had considerable concern about them and the disruption of classes a number of years ago, but we have not had any particular follow-up of that recently. I guess the impact of those concerns leads us to make the statements we have made.

Mr Beer: If, though, those programs are offered—

The Chairman: Excuse me for interrupting, but we are getting to the last three or four minutes and I would like to give Mr Johnston an opportunity to ask a question.

Mr Beer: I was just going him a chance—

The Chairman: If you could wind yours up, that would be—

Mr Beer: I will be brief with this. If the classes, though, are offered the way they are now, offered in the same time frames as they have been, even though the program would be a mandated program, you do not have a quarrel with that per se. Is that a fair statement?

Mrs Bawden: That is right.

Mr Beer: If Mr Johnston would like an opportunity, I would be happy to turn the microphone over to him.

Mr R. F. Johnston: Thank you. I apologize to the deputants, who make regular appearances before the committee and the select committee, for not being here. There was a conflict in the House: I had to speak on the access legislation for children in the province. I was not able to hear the presentation, but presuming that you read it as it shows here—

Mrs Bawden: That is right.

Mr R. F. Johnston: —I have two matters. One was that argument is made by some people that the development of a heritage language does assist in basic learning skills for groups of children whose first language is not English. You did not seem to deal with that very much. You separated out the concept of basic learning requirements within the system from the heritage-language concept. I just want to hear your response to that assertion made by Professor Cummins and others.

1600

Mrs Obeda: I would like to comment on that. There seem to be conflicting reports on that. There are some that say it helps and there are other reports and studies that say it does not help but hinders. I guess whether it helps or it hinders depends on the child and the child's ability to learn.

Mr R. F. Johnston: I am not aware of any studies which have shown that it has been negative. If you do know of some in terms of negative effects of heritage languages on other learning skills, I wonder if you could perhaps just pass them on to the committee. I have not seen any that I know of that have shown problems there.

Did you get a response from Mr Beer or others about your desire to encourage public and separate boards to maybe talk together about who should provide the program in a given area, as to whether there are regulations that are going to be dealing with that?

Mrs Bawden: I would gather that the regulations are dealing with that, including the coterminous aspect.

Mr R. F. Johnston: Okay. Sorry I missed that, but I am glad to get that on the record.

Thank you for your brief. As always, it is very thoughtful. Whenever the Ontario Federation of Home and School Associations come before us, it is always a very well-thought-out and well-presented brief and I always appreciate it.

The Chairman: Mr Johnston has finished with comments which I do not need to repeat, as he has done it quite nicely. We thank you for coming and we appreciate your contribution.

Mrs Bawden: Thank you very much.

The Chairman: Our next presentation will be from the French School Board of Metropolitan Toronto. Representing that organization is Clay Derstine. Welcome to the committee, Mr Derstine. You have half an hour, including time for questions and answers as part of that time.

## CLAY DERSTINE

Mr Derstine: Thank you for hearing me. I should make it clear that I am not representing. I am a trustee elected from Toronto to the French board, but the French board has not made a policy about heritage languages. I think we are in favour, but at the moment we are just assessing what kind of multiculturalism we are up against and what kind of numbers, so the policy by itself is forthcoming.

The Chairman: Are you here then as an individual?

Mr Derstine: As an individual, who just happens to be a trustee for the French board.

The Chairman: Thank you for clarifying that. That is helpful to us.

Mr Derstine: I am also a Mennonite. My people came from Switzerland as radicals 300 years ago, because they had the weird notion that there should be universal literacy. Since in Europe at that time 95 per cent of the people were illiterate, we got chased out. We headed to Philadelphia, where my people set up farms and set up schools. That was in 1690, 100 years before the American revolution.

From there, by the time of the American revolution and perhaps partly because of it, we fled to Canada and we set up farms and schools in the Kitchener area. We achieved that 100 per cent literacy in our communities with our own public schools in the country, but with urbanization our people moved towards the cities. I am a member of the first generation after 300 years in North America who does not speak my heritage language.

I left the farm, I went to the city, and the language in the schools was English. I was the first Mennonite to graduate from Kitchener-Waterloo high school and go off to university, but I did lose my heritage language after 300 years.

As a matter of fact, I had hoped that when I was at Kitchener-Waterloo Collegiate I would pick up French, but I was kicked out of my French and my Latin classes within the first year and told that I had no talent whatsoever for learning languages and that I should take commercial options, which I did.

It so happens that after university I found myself in France not knowing a word of French. The first word I learned was "consigne," because I had a heavy bag and I had to find a place to put the bag. It was not bonjour or the vocabulary list they tried to stuff down my throat in grade 9 in the name of learning languages. It was "consigne," because I had a job to do and I had to find the word to make the job work.

After a year I was working as a translator and as an interpreter. I discovered very rapidly that it was not I that had no talent for learning languages, it was that the system had no talent for teaching them.

When I came back and wanted to raise my son in French in Toronto, I discovered there was no public French system there. You folks provided the opening and we used the opening and created a French elementary and secondary system in the city of Toronto. In doing that, I ended up being elected by the French community of Toronto to be a member of the French-language advisory committee and was chairman for six years. After I left, my son was chairman for two years.



I came here to speak about language learning and language retention. My expertise is that I lost one and I picked one up; I lost one in our system, but I did not pick one up in our system.

I want to remind you, as well, in the historical sense, that 75 years ago we were, in this country, at the time of regulation 17, when French was banned as the language of instruction in Ontario. From that, we went as far, 20 years ago, as having the Royal Commission on Bilingualism and Biculturalism and we enshrined bilingualism. At that time, the system that failed me, at least personally in the 1940s when I went to high school, invented immersion. From what we have learned about immersion language study, we are up among the pioneers in the western world in terms of providing language learning.

Seventy-five years ago we said it was one language, one flag and one God, whatever, and are now at the point where we have taken the bold step of allowing our children to learn not in the language of the home but the language of the linguistic minority in order to provide fluencies. That is a huge step and a great step forward for our system and for us as Ontarians and as Canadians.

I am proud of that. We are at a juncture now where we should use that expertise even further than we have begun to use it to apply the techniques we have learned to that other huge hunk of our society that was not part of the two original founding nations.

While I was working as the chairman of the French-language advisory committee, because of some of my skills I was hired by the Ontario Coalition of Language Rights as co-ordinator. We managed for the first time to put together those two isolations, those two non-English isolations. For the very first time, we managed to get francophones and multicultural folks sitting down together, sharing their expertise and moving towards the same goals. They had not talked to one another and they had not been encouraged to talk to one another. In their powerlessness, they figured they had better get from each other what they could.

They started talking together and they realized that the techniques were the same and that they were stronger if they worked together. When it was a question of francophone rights to French governance in the Supreme Court of Ontario, we brought in members of the ethnic communities who testified for the rights of francophones in this province.

When it was a question of Bill 80 here before you a few years ago, Serge Plouffe arrived, the former president of l'Association française des conseils scolaires de l'Ontario and at that time president of l'Association canadienne-française de l'Ontario, to say that francophone Ontarians supported the right to heritage languages even within an integrated school day.

What you have before you is an immense challenge. We have moved from the time when we made a travesty of teaching languages. Everybody was bored stiff. Everybody had to submit to huge vocabulary lists. No one came out at the other end being able to speak the language. We know the techniques now, and it is only a question of finding the goodwill to apply those techniques.

1610

It took a long time, even to get support from the federal government for my coalition. We were told when we went to the Secretary of State of Canada that there was money for multiculturalism and there was money for

francophones, but there was no money for people who worked within the two. I am sure the bureaucracy in both of them were terrified that there were people combining the two of them. They may have had to find themselves ending up combined.

Eventually, the Secretary of State at the time got so irritated with his bureaucrats that he came down from Ottawa himself and endowed us with working funds out of a pocket that he had at his own disposition. He was exasperated with both the francophone and multicultural civil service establishments, because we were new.

It is relatively new. This demand is new and the consensus in favour of language richness, of the heritage of languages that we can endow to our children is new. It is a challenge, but it is there to provide a heritage of languages for our children in a place where the country works in two languages and its communities work in many more. It awaits us, and I am here to testify that I think Bill 5 is a fine and very small and very significant first step.

C'est inimaginable que ces pauvres jeunes du système scolaire public de Scarborough n'aient pas les mêmes possibilités linguistiques que tous les autres enfants du grand Toronto. Tous ceux qui font partie du système catholique à Scarborough ont cette possibilité. C'est tout simplement une question de justice, qu'on concède aux enfants du système public les mêmes possibilités qu'ont tous ceux qui font partie du système public ailleurs à Toronto et, à l'arrière-plan, à Scarborough.

I believe you have the unique opportunity not only to pass Bill 5, but to think about how we can take the new tools we have to teach languages and make steps farther on in order to make of this dear land of ours a reflection, linguistically, of the fine and marvellous mixture of folks. We are learning how to live together in richness in our province.

The Chairman: It is refreshing to have someone with that kind of idealism come before the committee, and I thank you for it. Questions from committee members? Who would like to start off?

Mr R. F. Johnston: It is just that he is so young, at heart at any rate, that he has that kind of optimism, although I think it is very true, just as a comment first, that the breakthrough of the multicultural community and the francophone community coming together was enormous. In the old days, politically, they saw each other as being in opposition for the same kind of bucks and attention and it was always very tough.

We have had some conversations in the past about what works, in your view, Clay, and I wonder if you could talk just a little bit about that. What we have here is a very limited initiative in terms of heritage languages to deal with the Scarborough amendment, as you have said, but you have talked a great deal about the failings of core French programming as compared with extended French in the school system. You have talked about the need even in our immersion programs to start understanding the role of play in the language a great deal more, and you have had a fair amount of experience with France's systems in dealing with some of these matters. I wonder if you would maybe just talk a little bit about some of those matters.

I agree with you that we really need to think past where we are with Bill 5 and what it does at the moment and look much more strongly at the role language should play in terms of basic education, as I was saying to the earlier group, and the best ways of teaching that. Although you have alluded

to the fact that we know that at the moment, I think we can look at some of the ways we are teaching some languages in a core fashion, and not just French, and see that it is not working. We are using techniques similar to what we were using in the 1960s and before, yet we now know there are some other techniques that work wonderfully. I wonder if you could talk about them a bit.

Mr Derstine: The goal eventually is to fit the deliverance of educational programs to when the child has the optimum capacity to respond to those programs and not when the system finds it the easiest to budget or to fit in.

That is easily said and not easily applied, but I think it should always be done. If you can conceive of the worst possible time to teach a language, it is at the time of puberty when there is the worst self-consciousness among adolescents, while they are growing new bumps and new bits of hair and are very aware of their self-image, and you are asking them to make funny noises to one another. You could not have found a worse time and that was the time when we started teaching languages.

Errors like that I could go on at great length about. We teach kids in the wrong way. We are busy teaching grammar and we should be teaching kids baseball. I went out to my neighbourhood school and I had tears in my eyes. I saw a bunch of Portuguese kids heading off to play ball and they had to do what they did in Quebec just recently, I gather. They had to invent terms for home run and all the rest. Those kids had learned our game but they were playing it in their language.

Let me tell you that I was proud as an Ontarian that they felt interested enough in our culture that they learned baseball, that they wanted to play it and felt at home enough in our culture that they could play it in the language from their homes. That made me feel very proud.

It is very important to teach kids languages. I think teaching languages is, first of all, a game between the ear and the mouth. What we do, awkwardly enough, is immediately stick in the eye and the hand to bungle all that up. We will never pick up fluency that way. We do not put the eye and the hand into it for little kids when they learn a language in their playpens, and they learn very quickly. We have neglected that intelligence and we carry on with specifically the wrong tools and in the wrong way and the wrong order and we continue to do it, as far as I am concerned, in the core programs and in the extended programs when the kids do not get enough to really learn something. It is tokenism. There are other ways to do it.

In France, kids go to school at two years old. That is the time when the kids have a classic capacity for learning languages. Each word, each sound that produces an effect on the environment of a kid who cannot move around very much is a key sound to that kid and he is going to use it. It does not matter what language it is. By teaching songs, dances and games from two to four years old, we are neglecting the time when the kid has an optimum capacity to pick up languages. Now that is just the ear and the mouth.

Then, say, at five or six we decide which language we provide the eye and the hand aspect to, which language the kid learns to read and write in after having fluencies in two other languages. It is a cinch if we could find the will to solve our day care problems and with an early childhood education solution as they do in France. By the time the kids are three, although it is not compulsory until six, 97 per cent of the children in France are in early



childhood education. So there is a challenge for you. Does that answer your question?

Mr R. F. Johnston: Yes. It is a nice start.

Mr Beer: One of the interesting things I think you must be facing as a member of a new school board now that there are two French-language school boards in the province is dealing with this particular program. I wonder if you might share with us—particularly from the perspective of the Toronto board where, if memory serves, a number of the trustees reflect that francophone, multicultural reality, with people from a number of different backgrounds—what kind of demand you have had from the groups around the heritage-language program or what kinds you anticipate? Have you had discussions as to how you might develop some of those programs? I wonder if you might share that with us.

1620

Mr Derstine: Are you referring to my time at the Toronto board or at the Metro French board?

Mr Beer: I guess both if they are relevant. I was thinking more particularly of the most recent, the creation of the new Toronto French-language public board.

Mr Derstine: The Toronto French-language advisory committee was unique in Ontario in the sense that it was one of the few French-language advisory committees that actually functioned in French. They could provide trustees who were from Italian backgrounds or from Anglo backgrounds who had a francophone member in a mixed marriage and who had picked up the language as a result of that. Our French-language advisory committee, unlike any that I know of elsewhere in the province, functioned in French.

We are busy. We have the same kind of multicultural meld in our board as there was at the Toronto board. I believe there are 60 or 70 different nationalities in the French school board. But our problem right now is that we do not—you have to be very careful when you make a survey of people's linguistic and racial origins because it is sensitive material. Half of our folks were busy working with the North York board before and half of them with the Toronto board. They are not used to working together and making united demands. We have to make a count of those folks before we can figure it out.

But as far as I know, and I have been doing a lot of hiring in the last while—certainly it is one of the questions we asked, how people felt about heritage languages in a French school board—I found no argument at all about the idea with any of the people we hired. They welcomed it as long as the number is sufficient.

I cannot report to you, unfortunately—I know there are plenty of blacks, but I do not know whether, for instance, there are enough blacks to provide black heritage classes versus black heritage-language classes, as I understand one of your delegates was asking for. So those questions are still unknown. The goodwill is there.

Mr Beer: So the board to this point, I understand, has not established a specific heritage-language program. You are still looking at what programs you would have demand for, what you might be doing.



Mr Derstine: That is right.

The Chairman: Mr Adams, did you have a short question?

Mr Adams: It is a comment. I am a substitute member on the committee, so I do not really want to draw you out any further. I enjoyed what you had to say. I was interested in your earlier remarks about the importance of the way something is taught. So often—it is not just language—people imply that a student does not have talent and therefore sort of give up. You mentioned, for example, that it might be a question of timing, that it might be a question of technique. I am delighted, of course, that you support this initiative of the government. It is one I support very strongly.

I think, though, you have flagged an important matter, and that is that we should never forget that the way these classes are delivered is exceedingly important. One can well imagine situations in which children go quite unwillingly to them and therefore it is that much more important. Their parents are very willing for them to go; the students may not be. So I think the way they are delivered and, to some extent, the timing are extremely important. I thank you for making that particular observation.

The Chairman: Mr Derstine, thank you again for sharing your thoughts with us. It will be helpful to our deliberations.

Members of the committee, we will be interrupted and will probably be losing some time to go into the House for a vote, so I am trying to move things along in anticipation of that. Greg Grande, president of the National Congress of Italian-Canadians, Toronto District, is next. Welcome to the committee. Would you take a seat up here please and introduce the people with you.

#### NATIONAL CONGRESS OF ITALIAN-CANADIANS, TORONTO DISTRICT

Dr Grande: Yes, I will. My name is Greg Grande and I am the president of the National Congress of Italian-Canadians, Toronto District. Beside me, to my right, is Rosario Marchese who is on the board of directors of the congress and a trustee for the Toronto Board of Education. To my left is Vilma Ricci-Tullo, a member of the executive of the congress.

We appreciate the opportunity to appear before you today and express our concerns on Bill 5. The National Congress of Italian-Canadians, Toronto District, is an umbrella organization whose primary mission is to advocate for, promote and support Italian-Canadian ideals in greater Metropolitan Toronto.

Since its inception in 1974, the congress has been vitally interested in the heritage-language program and has been a promoter of an integrated program taught by qualified teachers and supported by both parents and community. Over the years, the congress has submitted to the Ministry of Education many briefs on heritage language. For your benefit, in our presentation we have attached one of the latest briefs we have submitted to the Minister of Education (Mr Ward), in response to the yellow paper Proposal for Action, Ontario's Heritage Languages Program.

At this point, I would like to call on Mr Marchese to present the congress's views and its recommendations.

Mr. Marchese: It is a pleasure for me to be here for the first time to ever address a committee. It is a particular pleasure to speak on this issue because it is an issue I have dealt with for a long time and feel and have felt strongly about in the present and past, and will in the future, I suspect.

I want to comment briefly on Bill 5 and other aspects of the proposal for action on heritage-language programs in Ontario and speak generally to this whole issue, because I think it is more than Bill 5 that we want to speak to, but I think we need to address that as well.

It has been referred to by some as the Scarborough amendment, and it makes a great deal of sense to me. It is an attempt to bring Scarborough in line with the multilingual and multicultural reality of Ontario. This, we believe, is a good thing. If we can bring Scarborough in line, we may be able to bring other boards in line as well—we hope.

Part of the whole issue of Bill 5, which makes it mandatory for boards to provide a heritage-language program, is that it is a good thing in that it will make it mandatory, as it should be. I will talk briefly about why I think it is useful and then talk about some of the problems of the mandatory aspects of Bill 5.

The good thing about making it mandatory is that some boards would not do it otherwise. I think we have experience enough to know that. As a parent, a teacher and someone involved in the Toronto Board of Education as a trustee, I have seen that debate on that struggle for a long time. We feel quite confident that if we do not make it mandatory, most boards will reject it.

I personally am one of those trustees who does not support the view that has been put forward by the Ontario Public School Boards' Association. I wish I had time to critique that in detail, but I disagree almost entirely with its presentation, except some aspects of it that deal with in-service training opportunities, the program resource guide and so on, which I think are very valid. So I think we need to make it mandatory.

What people do not realize about the mandatory aspect of this is that boards will still have the option to provide a variety of programs, which means that most boards will provide the least offensive of the possible programs they could offer. My suspicion, of course, would be that Scarborough, for example, will offer a program on Saturday morning. What a delightful thing. They might even be gracious enough to offer it after school. I doubt they would do that. Of course, they would never even contemplate the idea of integrating within the school day, on an extended-day basis.

We know that although we are going to make it mandatory, these boards like Scarborough will provide only the minimum, which is in my view, if not offensive, the least effective of all the possibilities. I think people need to take that into account. So when organizations such as the Ontario Public School Boards' Association say we should not make it mandatory, it is hardly a big deal, I argue, because most boards will do the least. That is that part of Bill 5.

1630

Continuing with other aspects, because I think we need to talk about them, I was reflecting about this in terms of what one could say here today to you and thought that there are not a hell of a lot of things I could say that

might be clever, intelligent, thoughtful or profound pronunciations that might make some of our members of the Legislature in the end change their views about this. I really believe it has a lot to do with politics and the politicians who represent us as a whole, so I will speak to that in a little while.

But because I felt it was necessary to comment on some of those clever and thoughtful things, I thought I would speak to some of the major objections that we hear, because you have to remember that whenever another board is going to embark on this, it will go through the same things the Toronto Board of Education did, for example, and we will have to deal with it. This is where the province and the government can play a role, you see, in terms of dealing with a lot of the myths, distortions and untruths as it should. If it does not play that role, then we are throwing this issue out the window, almost.

I need to repeat some of the complaints, for example, that integrated extended day programs will balkanize communities. I know Mr Johnston has commented on that; I have read the excerpts. That is the argument we have heard all along, that they will ghettoize communities, as if to suggest that at the moment non-English-speaking boys and girls are integrated, happy and almost anglophones, and suggesting further that after-school programs do not balkanize. It is a serious problem. It is hard to defend the issue of ghettoization, because in my view it is not a real issue. But it is an issue for those people who oppose this program. It is one of the things that keeps on recurring as a theme.

Another complaint is that costs are excessive and English-speaking Canadians should not have to pay in part or in whole for any of these programs. This fails to recognize the social, political and economic profitability of a nation that can speak two, three or four languages at once.

Another refrain that we have heard over and over again is that immigrants will not learn to speak English or become Canadian, which fails again to recognize that the people who speak more than one language learn a second and third language more easily and are in this process intellectually and culturally enriched. It fails to realize again that this does not make non-English-speaking Canadians less Canadian, but in my view makes them better, wholesome Canadians.

These are some of the cursory arguments against the objections. Believe me, there are more, but I thought I would select only three for our purposes here today. I wonder too, in making these arguments as we have made them in the past, whether we have convinced anybody. I think we have convinced a few, but we have not convinced too many politicians, for example, at the Toronto board, who have always been opposed. The Scarborough trustees have not been moved one inch. In fact, if anything, they have become more rigid.

I can tell you one thing in terms of what would make a difference in this whole issue of heritage languages. If we had 100 delegations in any board of education, but particularly here at the ministry as well, all middle-class anglophones, this government and the Scarborough Board of Education would be 100 times more receptive and responsive. We can guarantee that.

I remember the debates we had at the Toronto Board of Education where, when the nonanglophones came to speak, one side of the board was unresponsive and almost offensive at times in its treatment of immigrants, and not very receptive at all to any of the arguments they made. When we had the problem with teachers and preparation time and we had quite a number of delegations of



anglophone origin, there was a tremendous difference in terms of how half of the board reacted to those delegations and to their concerns.

You may not see this. It is almost imperceptible and you have to be there to realize it, but 100 anglophone delegations would make a hell of a difference. Unfortunately, this has not ever happened anywhere that I have been and it may never happen, but I hope one day we may see that. It is something that I dream of.

You may have gathered from the last point I made that the real culprit in all of this, putting aside teacher federations, which is yet another matter of debate and totally too long to talk about, is the failure to move ahead with second- and third-language acquisition in Ontario, and that is politics and the politicians. I do not mean to offend anybody. I hope I do not, but I want to speak to the reality.

The reality is that most politicians in Ontario at the school board, municipal and provincial levels are unilingual, middle-class anglophones, with rare exceptions. These and most other institutions, such as the media, social service agencies, boards of education of course, judiciary, police force, etc, with few exceptions, are governed by unilingual, professional English-speaking Canadians.

The few nonanglophone middle-class professionals at the provincial and board levels have either no commitment to heritage languages at the elementary level or modern languages at the secondary level or, if they do, are so inaudible that they cannot be heard by anybody. There is a third reason: Nonanglophones tend to internalize the norms of those institutions I have described. So even if they did in some ways have a sense to support heritage languages, it disappears because it is not acceptable in general to speak of these things.

The disfranchised are not in power and therefore are powerless. Like the native community, third-language communities are powerless, so the struggle for linguistic rights—to limit ourselves to this for today—continues and will continue until people are some day represented a little more justly.

There is more. I hope we have a half-hour.

The Chairman: Carry on.

Mr Marchese: There is a lot more. I have been digressing a bit.

The sad thing about all of this is that the fears many politicians have about this issue are totally unfounded. Promotion of third-language acquisition will never erode the English language, or the English culture for that matter. The sad thing is that heritage languages will enrich and integrate all Canadians and, I dare say again, make them better Canadians.

When politicians are brought to a more enlightened view, they will realize that the boards which do not provide programs willingly, which do not endorse heritage-language programs, which do not provide financial assistance, which do not provide a positive nurturing environment for these programs will fail miserably.

Politicians will realize, for example, that offering a heritage language after school or on a Saturday morning is totally inadequate and wasteful. They will realize that the students would learn to resent studying Italian, Greek,



Chinese, Portuguese or any of the countless other languages we teach after school for two reasons: it competes with other after-school activities, but more important, they would understand intuitively that it cannot be a legitimate program if it is not integrated in the regular schoolday. If it is after the schoolday, it is a serious problem in terms of how students will treat it.

The after-four program is inadequate and the only thing, in my view, in terms of what we need to do, is to move into what we already have. I think we need to build on to things beyond what this bill does. I think this government needs to support an integrated extended day, because that is the only correct way to deal with this in order to achieve multilingualism and multiculturalism. Anything short of that is useless; if not entirely useless, it is almost useless. I think we need to build on that.

But if the province does not take a strong and positive step to say, "We believe this is the only way," then you can rest assured that the programs we offer after school will not lead to fluency, will not lead to the maintenance of the culture, if that is the other part of what we are doing, will not lead to anything.

I think we need to move on to that, and that is where the province needs to be more proactive. It needs to provide incentives to those boards that have taken on this issue of integrated day, like the Toronto board. We have not done it lightly. It has cost us a great deal in many, many different ways, not just financially, of course, but in many other ways. If the province were to take leadership on this, I think it would be the best thing it could do for multilingualism and multiculturalism in Ontario.

The next thing that needs to be done is for this province, through the Ministry of Education, to realize that we need to move on and use third languages as the medium and the language of instruction. That is the next step. But if we do not support an integrated day, I know the other will never be achievable.

I think that when politicians accept that acquisition of a second and third language is a social, cultural, economic and political advancement, they will more willingly support what is now illegal in Ontario, and that is what I just described. If we are truly supportive of multiculturalism, then we need strong policies to support multilingualism. We need a Legislature with a vision, a Legislature which will promote second- and third-language acquisition as a social, cultural, intellectual and economic gain for all of Canada.

The Chairman: Thank you, Mr. Marchese. Mr. Grande, does that conclude the presentation of your organization?

Dr. Grande: Yes. Do you have any questions?

The Chairman: Thank you. We have time for some questions.

1640

Mr. R. F. Johnston: If I could just pick up from where you are leaving off here because of the history you have already had, why I really wanted to have hearings is that in your policy—I gather you actually took the time to read part of what I said, which is quite incredible.

"What I am interested in is where we go from here, because, in my view, and I think it is an excellent point you made, the Scarborough amendment probably will just bring in the lowest common denominator of program that can be brought in in Scarborough and really will not do what we want it to do in terms of enhancing the status of heritage languages.

What role does the congress play now in terms of the government's development of language policy? Do you have ongoing connections and have you been in ongoing contact with the Ministry of Education, for instance, in looking at the whole question of language policy and, within that, heritage-language policy?

Dr Grande: I am glad you ask that question, Mr Johnston. We have an educational committee—it is a standing committee in the congress—that has been studying over the last 10 years all the issues and policies related to heritage language and teaching third languages in both the elementary and secondary schools, particularly in secondary schools. We are in the process of arranging a meeting and making a submission to the Minister of Education regarding the third-language guidelines and the revision of OSIS.

It has been an ongoing process with us, and as I mentioned in my introduction, we have submitted many briefs that deal with this issue. As a matter of fact, we supported community-based heritage languages before the province was endorsing or coming out with heritage-language legislation.

We do have a committee that deals with that area. We are in touch with educators and the ministers and we hope that some of the ideas that were strongly put forward by Mr Marchese and supported by our briefs over the years will be heard and some shift of policy will be made to implement heritage languages in an integrated day within the schools and according to the wishes of the community and students.

Mr Marchese: Can I just comment on that briefly again? As you probably all know, the national congress is a volunteer organization. As many of you who have been part of any volunteer organization will realize, that is time you put in after the regular work that you do.

Part of the difficulty we have is to be able to reach out to our community in the way that we would like. Making submissions like this, of course, does not appear to be something that takes time, but it does, and there are always only a few people to do that. So in terms of outreach to the ministry or outreach to the community or other organizations, it is a very difficult thing that we do, but we do it as much as we can and it is never enough.

Ms Ricci-Tullo: May I answer that too? As a volunteer worker on the congress for the last couple of years, it does become very frustrating when I look back now at the response that I wrote two years ago to the yellow paper and realize that we are really not even at that stage here of implementing some of those things. We are back at the Scarborough amendment, not talking about integrated day, which is where I think we should be after this amount of time we have spent on it.

Mr R. F. Johnston: Your points you made about people taking on the values of their institution and therefore getting the message very clearly of a devalued heritage language, even with this initiative, I think are important. I am interested in knowing how we can move the process along. I would hate to see the Scarborough amendment be the end of this issue in

political terms for a long period of time. I think it really needs to be part of the holistic review of our language policy.

On that, I wanted to ask if you, as a congress, have done any looking at the end results of all this up to this point, of policy up to this stage? What is happening, for instance, with the students who are taking Italian at university? Are we seeing an increase in their numbers? Are we seeing that their language capacity is improving or deteriorating as they get there in relation to what we had a decade ago? What has been the result of the voluntary, after-school and weekend reinforcement of heritage language we have had up to this point? Do we have any information on that?

Dr Grande: Yes, we do have, if Mr Marchese would like to expand.

The one general comment I would like to make is that according to the data that we have—and they are not hard data in a research kind of way but just for our own information—there has been an increase of languages in university.

However, we do have, as part of the response to the third-language guideline, university professors who are also complaining strongly about the fact that the programs provided at the elementary and secondary school level are neither continuous nor adequate to be able to allow the student to pursue language at the university level.

As you well know, OSIS does not make compulsory the teaching of a third language except French, and even that is at a grade nine level only. So we have that specific problem which is endemic to the whole philosophical approach in education of teaching and promoting the teaching of languages, both at elementary and secondary levels.

Mr Marchese: There are two things attached to this. I think that what we are seeing in the province is a decline of students taking languages. In the Toronto board there is a decline. I think there are two things that have made that happen.

The first is OSIS, which has obviously increased the compulsory credits but made it impossible for some of the students because they want to fast-track, to take, in their fifth year, a language or an arts or a music program and so on. I think that is one of the reasons we are seeing a decline.

The second most important reason is that students are beginning to see that language is not valued in general and they are not seeing it as important in terms of what will get them a job, although we are seeing the contrary in terms of the needs of people who have a second and third language in all sorts of social service needs and other needs.

I think it is sad in terms of what is happening. I believe our response to the draft guidelines is based on the decline of students taking languages and on the need by the province to be a little more proactive in this area, because leadership comes from the top down. If people perceive that the province is taking it seriously, so will others begin to as well. The congress will begin to pursue this a little more aggressively as we move along.

Ms Ricci-Tullo: I just want to say one more thing. As far as just the flavour of things on the street, I can see a terrific difference from 10 or 15 years ago to that initial, growing enthusiasm about "Isn't it great to be Italian-Canadian or Greek-Canadian or Portuguese-Canadian?" There was a



real feeling there. People were starting to go back and rediscover their roots and make contacts with their own families that they had lost contact with.

Then it seems that there was no real follow-up, so I am seeing now teenagers in high school who are losing it a bit. They do not care any more. There are losing that contact and that cultural wealth that we worked so hard to initiate. Now we are saying: "Well, that is enough. Forget about it."

Mr Beer: Thank you for the presentation. Thank you for what are clearly strongly held commitments to the program and in particular for the kind of vision that you have of where you would like to see language learning develop.

I want to just start with one comment. It is awfully important that we keep reminding ourselves that in dealing with language I think you quite rightly noted that there is a political dimension to this. There is, and I do not see that as either good or bad; it is just part of the reality. So as we are groping with a whole series of issues around third languages, as we perhaps call them in terms of English and French, I think we want to remember where we were at one time around two languages. In some people's minds, a lot of those battles should be fought again and the results changed.

1650

I say that simply as a middle-class anglophone who does not come from Metropolitan Toronto. It seems to me that, none the less, there are some things that have happened over the past decade that are still positive in breaking down a lot of the barriers around language. There is the old truism that if you learn a second language, the third one will become easier and the fourth one easier still.

I would also say that as people learn languages, it helps to break down a lot of those myths which you quite appropriately addressed. I think it is very important for us, as politicians, to keep hammering away about those myths in the same way that during the discussion over the social assistance report, there were a number of myths about people on welfare that we had to keep addressing and saying, "Those statements are simply not true."

In recognizing that, I think we still have to underline that we are not there yet, that there still is a lot of work to be done in bringing people around to a better understanding of language and the role it can play in helping a young person feel comfortable with himself or herself, so they can, in effect, begin to become part of the community and speak English or French, as the case may be, but maintain the child's family language.

In noting that, none the less, some 68 boards and close to 100,000 students have still been involved in a program—perhaps not the ideal program, but that has happened. I suppose that in areas outside of the larger urban centres there is still a certain joy of discovery and there is a newness about some of this. So the way in which some of the communities in my area are responding is, in a way, a more positive one in terms of what I am seeing.

I guess the question, as we proceed here in terms of Bill 5, is trying to ensure that we can go ahead with a program that will continue, if you like, kind of an educational process of the population at large, that this is not a program people need to be afraid of. There is a kind of fear among many, as



you pointed out: "What does this mean? These people won't be Canadians. They won't learn English. They're going to go and live in their own communities."

I do not think there is any doubt that when you look at the data that are produced on what in fact happens to children who go through these programs, you see that because they feel more secure in their own skins, they become Canadian and they become part of the society.

But I am wondering if we are at that point yet where we know how to proceed, how we would develop these programs. It was one thing when we started talking about developing English and French; I think there was a recognition in a sense by the non-French-speaking population that if you look at the—

The Chairman: Mr Beer, are you getting to your question? We are running to the end of the half-hour.

Mr R. F. Johnston: A very clever filibuster.

Mr Beer: I am sorry. I am coming to my point. In the House, the opposition can always elaborate on its questions. This is the only place we have.

I wanted to draw a parallel in terms of French immersion and the tremendous popularity of that, in part, because parents have seen that there is a link.

As you go forward and look at how you would develop this program, what are you looking at in terms of how other languages would be brought into the school system? We would be talking, presumably or potentially, about many languages. How do you see that developing if we were to move in that direction?

Mr Marchese: If we use the Toronto board as an example, in terms of the integrated day, which is what I think you are getting at, in terms of what I would like to see first as a step that is important and needs to be taken by more boards, then you simply leave it to the various communities, the various schools to decide whether they would like it. If you have a majority of the parents who like it, of course they would have the program.

Then you offer a program to those language groups where the numbers are enough to provide classes. I do not have any problems, for example, with mixed ability groupings and bilevel group classes, because I believe we can teach them and I believe there is enough research in co-operative learning strategies that we can teach teachers how to do it. Many of them are probably not familiar with that strategy yet.

I think it is quite easy; we can do it. We can use the Toronto board as an example in terms of what can be done in an integrated day. If you want to talk about using Italian, for example, as the language of instruction to teach other subjects, then we can go to Manitoba, as comment has been made by some members here, or Saskatchewan, and see what kinds of programs have been developed, which we have heard are very good. If we need examples of that, we can go there. If we need an example of how an integrated day works, we can go to the Toronto board. It is very close to you here.

I do not think it is difficult. What is difficult is the will to do it, as we often say, because once we believe that it needs to be done, then we find the ways to do it. If you do not believe in it, then you find all the

objections. I have mentioned only three, and you will add so many others, in terms of its nonworkability, it is too impractical, too difficult and so on.

The Chairman: I think that is a good point to end on. I do not like cutting you off, but I have to think of the fairness to the groups that come after you, as well.

Mr Marchese: Of course, we completely understand.

The Chairman: Thank you very much for coming before our committee. Your comments have been helpful.

Mr Marchese: Thank you.

The Chairman: Our next presentation is from the Toronto Board of Education. I would like to welcome Tony Silipo, chair of the board. I am trying to move things along, Mr Silipo, because I am aware that members of the committee may have to leave before six o'clock for a vote in the House.

Mr Silipo: I will try to brief. I do not have a very long presentation to make.

The Chairman: I will try to give you as close to half an hour as possible.

#### TORONTO BOARD OF EDUCATION

Mr Silipo: Okay. I should just clarify at the outset that although I am here as the chair of the Toronto Board of Education and will comment on a number of positions that are board policy, we as a school board have not dealt directly with the issue of Bill 5. I am not giving you a Toronto Board of Education position per se on Bill 5, but I think I can certainly extract from various board policies and initiatives what the board might do were that issue put before it. I just want to be clear on that.

The Chairman: Thank you for clarifying your role today.

Mr Silipo: As members of the committee may or may not know, the Toronto Board of Education has been a promoter of the heritage-language program for several years. We have presently more than 10,000 students participating in the programs, which we offer in three different settings: the integrated day, with the extension of the school day, the after-school and the weekend programs; roughly a third in each of those, with a slightly lower number in the after-school programs than in the other two categories.

I basically want to make a couple of points. I want to talk a little about the question of the mandatory nature of Bill 5. That is something I know the committee has been grappling with and dealing with.

I want to talk a little bit about some of the related cost items that keep being raised as a problem, and I want to talk briefly also about a couple of issues beyond Bill 5 that I would urge the committee, at some point, to take a look at, or certainly the government to take a look at, in whatever way this place functions. I am not always entirely sure of where things—

Mr Adams: We are working on it.

Mr Silipo: You are working on it. Good. Okay.

The direct issue that this bill addresses, of course, is the one around mandating school boards to provide the program where 25 or more parents request it. I know that in some of the submissions the committee has received the issue has been raised about the question of local autonomy and how that would be an infringement of local autonomy. It certainly is something that is not new to us as a school board.

If I can draw a little bit of a parallel to the experience we had with the introduction of the integrated day program, since 1977 it has been possible for school boards to offer the program in the three different ways I described earlier. It was also the case, however, with the exception, I think, of the Metropolitan Separate School Board, that not many of the school boards had, even by the mid-1980s, taken that option of the integrated day and really done very much with it.

We had a couple of schools in our system that offered the program during the school day. They tended to be schools where the population was predominantly of one ethnic background, one language background. Both cases were Chinese at Orde and Ogden schools. Beyond that, we had not done very much.

#### 1700

In the early 1980s the Toronto Board of Education had the political will. I know that the earlier group talked to you about the willingness on the part of politicians to tackle some of these issues. We did change board policy to the point where we forced—if I can use that word—schools to look more critically at their school makeup and to provide an opportunity, where the interest was there on the part of the parents, to be able to have the integrated extended-day option as a real option, as opposed to something that simply existed on paper but was being thwarted in a number of different ways.

As a result of that experience and that process, we now have 21 schools in which the integrated day is being taught. That is 21 schools out of about 110 elementary schools. So that is a significant step forward for us.

More important than that step forward, I think, is what has come out of that. In the early years there were no doubt a number of confrontations and difficulties that developed, certainly between the board and the Ontario Teachers' Federation, and certainly in local communities there were a number of major problems that did develop and one should not deny those. I think the fact that we now have in those 21 schools and largely throughout the system an atmosphere of acceptance of these programs, and I would say even in many cases an atmosphere of understanding of the value of the programs, is probably best reflected in the fact that in a number of these schools we have large numbers of students who are not of the particular language background participating in the programs.

One of the two schools that I mentioned before is a prime example. Orde, which used to be predominantly Chinese-speaking, is still the largest group, but it is no longer 70 per cent as it used to be. However, there is still an enrolment of about 70 per cent to 80 per cent in the Chinese heritage languages program, which means that at least half of those students who are taking Chinese are not of Chinese background.

We can give you a number of other examples of other schools where that is happening as well. In a number of schools the enrolment in the Spanish

program, for example, and in other programs tends to be higher than by children who come from Spanish-speaking homes. So there are very clear examples where that acceptance or tolerance has gone even beyond that, to where people see the value of language learning and language-cultural retention. If we can get to that second stage, then I think we are really on the road.

All of that is to say that although at this point in time the step of the province's mandating the boards to offer these programs is very clearly an imposition on school boards that would be quite willing to continue not offering the programs, I think it is a sensible thing for the province to do if we are serious about promoting and enhancing the rights of language-cultural retention and learning in our schools.

I know that the question of costs is something that keeps being raised. It is ironic that it should, but I think it is understandable also that it does come up. The grant structure for heritage languages, compared certainly to the grant structure for other programs, tends to be quite good, and you may be surprised to hear the chair of a board say this to the government and to the committee.

What happens, however, when you deal with situations like the Scarborough board, which obviously is a board here in the Metropolitan Toronto area, and other large urban boards is that they justifiably will be able to say to you, as we at the Toronto Board of Education will say to you, that as significant as those grants are, when you put them on a tally sheet and deduct them from negative grants you give us for what you call ordinary or regular classroom programs, the bottom line is still zero. So we do not get the grants in that way.

We could argue back and forth about whether in fact you are giving on the one hand and taking away on the other or exactly how that works, but I think what I am saying is that for a board that is opposed to the introduction of a program like this, the funding structure, especially for a large urban board, is certainly something that gives it a lot of grounds on which to base that complaint. All I would simply say to you is that this is something the government will need to take a look at. Certainly we, as a board, will continue to impress upon you at any level and in any way we can the need for you to do that.

In fact, if I can digress for a second, I can alert you to the fact that just this afternoon we placed in front of our building a billboard which shows the decline in provincial grants over the past number of years. I may not be getting many points with you in saying that to you, but I think it is only fair that you should be warned about that.

Basically, what I wanted to say in the area of costs is that I think the grant structure overall does give boards that are opposed to the introduction of the program grounds upon which to base their opposition, which may be above and beyond the position they may have on the question of the language and cultural issues themselves.

Beyond Bill 5, I think a number of points have been raised through these hearings and I have had the pleasure of reading some of the comments and the debates that went on around second reading of this bill. I would say that the things we, as a school board, have been saying to this government and to the previous government for a number of years are things that I hope we get to at some point, which is that although we are still at the point where we have to



take legislation like this in order to force boards that are still refusing to offer the program in any way, let alone what format to offer it in, there are school boards such as ours and I know others that would be quite interested in working with the provincial government, with the Ministry of Education, in looking at such things as pilot programs in bilingual education, using the languages as languages of instruction.

I know that previous speakers have talked to you about the fact that all of these programs exist across Canada so we are not venturing on new ground, but given the fact that we tend to always want to be cautious with these things, I think that even permissive legislation which would allow the ministry to monitor these things and to in fact allow the Minister of Education to approve those kinds of projects on a very limited basis, a very small scale, could only serve to enhance the value of language-cultural learning and take us to that next step that I think some of us are prepared to do.

Quite frankly, I also do not see that we are ever going to get to the point where we are going to have hundreds of thousands of students who will opt for that kind of program, but we will have a number who will and I think we are wrong to continue to shut off the opportunity for that to happen. I hope this is something the government does take on and this committee in some way, if possible, can pursue.

Above and beyond the various individual legislative changes that can be made, I think there has to be a sense come across from the provincial level as well as from the local school board level that what we are doing in the whole area of language and cultural retention and enhancement is something that we all consider to be important. If we get that message across, then there is nothing that can be done to be more positive than all levels of government being seen in their own way to be promoting those aspects.

I will stop there.

Mr. Chairman: Thank you very much, Mr. Silipo. Your presentation has been most interesting; it has stimulated a number of requests for questions. I would ask that the questioners try to keep their time to two or three minutes each so that we can get everybody in who has requested and still fit our last presenter in.

Mr. Adams: Your board obviously has very special experience in this language area and I can see why in some ways you are perhaps a bit frustrated, but you do recognize that it is different with other boards, for example in my own area of Peterborough.

I did not notice exactly when you came in, but I think you heard the previous presenters talking about the impact in the minds of the students of having classes after school and on Saturdays. The students view that as second class. Would you care to comment on that from your own experience?

Mr. Silipo: We looked at that issue in some detail during the process we went through at the board when we had a work group on third-language instruction back in the early to mid 1980s. That was something we certainly picked up. In fact, it was one of the reasons that moved us to look at the integrated day as something that would be a more viable model.

I think there are a lot of good things one can do with the after-school programs, there are a lot of good things one can do even more so with the

weekend programs, but there is no denying the fact that if you look over a period of time at the impact the integrated day program can have on children as opposed to the after-school and the weekend program, if we do the integrated day program and if we do it well, students will see it as a significant part of their education. They will absorb it as something that is part of the regular school day, regardless of whether we have to extend the schoolday or not.

I think that is another area that we could certainly get into in terms of whether that should take place. Yes, we have seen and can see in our own situation the difference, that students and indeed the system do make a distinction between the ways in which the program in the integrated day and the program in the after-school hours are viewed.

1710

Mr Adams: Mr Chairman, as I missed out last time, may I have a final comment? I do not know if you heard Mr Derstine, who spoke even earlier.

Mr Silipo: No.

Mr Adams: I think that in the after-school and the weekend format the way the material is presented and things like that become even more important in the motivation of the students than they would in another scenario.

Mr Silipo: Yes, I agree.

Ms Poole: I would like to congratulate the Toronto Board of Education on its very proactive stance over the years on heritage language. It is quite obvious that the Toronto board, as it is in many other areas, is one of the leaders in the province in this regard.

I was interested in your comments on the integrated day, the fact that you had 21 schools and, I think you said, about one third of your 10,000 students involved. Two questions: First, as far as the pupil-teacher ratio for the heritage-language integrated program goes, is it similar to, say, the French immersion?

Mr Silipo: Yes, I think that is a pretty good comparison.

Ms Poole: Quite comparable. The other question concerns the curriculum. I just wonder whether there was much variance among those schools in how they treated the integrated day program, whether perhaps in some schools the entire day would be in the third language while in others only a portion of the day would be. I am wondering how you fit the curriculum in.

Mr Silipo: As I am sure you know, we can only teach the heritage program for two and a half hours per week. We do have a number of different models in place. In some schools it tends to be twice a week for an hour and a quarter; in some schools it tends to be three days a week, and in a few schools we have it every day of the week for half an hour, although the extension of the day happens equally on every day of the week in order to have a similar kind of day.

As far as the curriculum is concerned, again it varies. We have spent a fair amount of time and money on our own in trying to pull together not only a core curriculum that we use for all the programs which we are now in the

process of revising, but also particularly to pull together curriculum materials for the larger programs.

We have a process in place whereby over a number of years we hope to do that with all the language programs. We offer programs in 31 different languages. In terms of the acceptance level, there are various shades in different schools, but obviously where it works best is where we have been able to integrate not only in terms of the timetable but also the notion of the program with the regular classroom work that goes on. There are places where that is working really well and there are places where it still needs some improvement.

Mrs Cunningham: I am curious. I am from London and was a school board trustee for a long time. I was recently elected to the Legislature, last March, the Progressive Conservative candidate from London North. Do you have daily physical education in Toronto schools?

Mr Silipo: Yes. I hesitated when you said daily. Our schools are obviously required to have some form of physical education. I believe it is done every day. It may vary; it may not be every single day.

Mrs Cunningham: One of our great arguments over the years was the crowded curriculum. The reason I asked the question is that is one of the bigger debates in London right now and has been for the last couple of years. I think they have made rather significant progress towards some daily physical activity, whether it be inside or outside the school, but it is one of the big arguments about how children spend their time during the day and what is important. We have just made some great gains, I think, in French-immersion classes. I think that particular board is looking with interest at what your board is doing.

Are the 21 schools where you have programs in special areas of your city? How would you describe where they are?

Mr Silipo: I guess if you could classify them, they tend to be more in the inner-city schools. They are in schools in which there is a larger percentage of non-English-speaking students, students coming from non-English-speaking homes rather than from English-speaking homes. But they tend to also be schools in which there is a fascinating mix of people from different languages and different socioeconomic statuses.

Mrs Cunningham: What do you think about the criterion of 25 families or more?

Mr Silipo: If I had my druthers, I would say that that should be lower because I think 25 may be difficult and we may then have to deal with some of the difficulties of having 25 students in different age groups and at different levels of ability. If there were a possibility of lowering that, I think that would be good, but then I think along with that would have to go a change in the grant structure, which is now based on 25 students per class.

Mrs Cunningham: It also happens to be the criterion for French language in the province, does it not?

Mr Silipo: Yes, I believe it is.

Mrs Cunningham: So we would have to look very carefully at that piece of legislation.

"Have you had experience in both the integrated program and after-school and weekend programming, looking back to the beginning of these programs?

Mr Silipo: Yes.

Mrs Cunningham: How does the parental involvement compare?

Mr Silipo: It tends to be much higher in the integrated day programs. The next group would probably be the weekend programs, interestingly enough, because they tend to be programs that draw together the smaller language groups that are not able to fit into either the integrated day or even the after-school. They tend to draw into some of those programs even students outside the Toronto area from other parts of Metropolitan Toronto.

There tends to be a whole community network that is supportive and based around the program. There is a fair degree of involvement there. The after-school programs would certainly be by far the least in terms of parental involvement.

Mrs Cunningham: Just one last question. In London, we have been doing the program on the weekend for a number of years, maybe 20 years. The parents run the programs for some 20, 30 or 40 different languages—I cannot remember. It seems impossible, but it is very large. Since it is hard to make legislation that suits all parts of the province, I was wondering whether you, even within your own board, would look at a combination, or are you aiming just towards the integrated day program? What is your plan?

Mr Silipo: We recognize that we will certainly need to maintain at least the weekend programs, and likely in a number of cases even the after-school programs. When I was commenting earlier about the relative value of them, it is not to say that we see that we could move or just stick with the integrated day.

There are cases where the numbers are such that you would not be able to offer certain classes, certain languages, so you have to provide another option. I think what you do is you then make that other option as viable and as solid a program as you possibly can.

Mr R. F. Johnston: Just one question. One of the difficulties with, say, trying to get away from the overcrowded curriculum notion and being able to teach physical education in the maternal language, or health studies or some other areas, is the Education Act, which basically says that you can only instruct in English or in French. That brings up the point that you made, that you would like to start looking at some experiments in Toronto or in bilingual schools, such as they have out west.

What discussions have you had with the ministry up to this point around permissive waiving of that provision in the Education Act which prohibits instruction, except in transition courses? Is there any possibility of future development in this area?

Mr Silipo: I have to confess that in the last few years, we did not once again approach the ministry with it. We did a few years ago and were simply turned down at that point. I suspect that this is something the board will likely take up again if there is any interest.

Part of it has also been that we have not seen that there has been any kind of interest at this end in our pursuing it seriously. We have a million



and one things that we can concern ourselves with as well. We can only try to beat our heads against the wall so often. If we picked up any sense that there is a willingness on the part of people at this end to look at that seriously, then I know we would be interested because I know there are community groups and parent groups that would be interested in our pursuing it.

1720

Mr R. F. Johnston: That is why I keep fishing for it. I am just wondering if some time or other the parliamentary assistant is going to let us know whether there is any interest in this kind of development or whether this is the dead end right here.

Mr Beer: We are always interested.

Mr Silipo: We can make the approach again.

The Chairman: Mr Silipo, I want to thank you very much for coming before the committee. With the depth of experience you have always had in this area, it has been most interesting for committee members to hear your comments.

Mr Silipo: Thank you very much.

The Chairman: Our final presentation is from the Toronto Chinese Parents Association. With us today we have Stella Ng. Welcome to the committee. We are trying to fit in your presentation before we get summoned by the bells to go back to the House.

#### TORONTO CHINESE PARENTS ASSOCIATION

Ms Ng: Thank you for the opportunity of having the Toronto Chinese Parents Association presentation. Not being a parent myself yet but maybe being one in the near future, I am speaking on behalf of the parents association.

Maybe I could just start off with a personal story. I have come across a lot of native-born friends of Chinese descent and, in fact, they love hanging around me and my sisters because we know some Chinese and we sort of share the culture and values. It is an amazing phenomenon.

It seems like there is a large population of the native-born of Chinese descent who never had an opportunity, about 10 or 20 years ago, to take heritage-language classes, because there was not as much support on either the provincial level or the school board level. A lot of them never had a chance to learn the language. They learned it after school, from nonprofit organizations or through church groups. I am really happy to see what the Toronto Board of Education has done for the past 10 years, as well as the province giving a lot more support in the whole area of language retention.

I asked these guys, "How come you want to learn Chinese?" They said, "Well, we want to go out with some Chinese women." It is so difficult for them to try to relate to people who are immigrants who have been here a long time from either Hong Kong or southeast Asia and speak Cantonese or Mandarin. They said, "Well, Stella, why don't you start some Cantonese classes?" I said: "Maybe you should go to the board of education. There may be some programs which might help adults in the near future."

Anyway, this is just a personal observation, but we are really happy

that a lot of the new Canadians or newcomers, as well as native-born kids these days, have a chance to take up a language of their choice.

I am sure most of you know why we would like to see heritage languages or languages of different cultures being taught to kids. One thing is that it has a lot to do with enhancing the self-identity, cultural identity, even to an extent, I will say, sexual identity of a lot of children. I have heard kids say, "Well, I wish I were a Caucasian" when they look in the mirror, because they really feel like second-class citizens sometimes when they know that the dominant culture is not accepting them as much as they would like to be accepted.

At the same time, learning their own language, as studies have shown time after time, knowing their home language or the mother tongue, always helps the children to learn better in English or even in French. I think you are probably well aware that a lot of studies have shown that children can learn many more languages than we thought they could learn, like three or four languages, when they are young. That is why we need to start them early.

The other thing is that I am sure the Metro Toronto area, even the province of Ontario, receives over 50 per cent of the new immigrants from around the world. The parents of a lot of them might not speak English very well. In order for the children to communicate with the family, the grandparents, relatives or even parents, I think keeping up with the mother tongue would really help communication within the families. With better communication within families, you could see they would be less likely to have potential family problems and, eventually, social problems.

There is also a lot of interracial exchange, even within the Chinese-Canadian community. A lot of the native-born, as I have said, who are in their 20s or 30s never know a word of Chinese because they never had the chance, but the younger kids these days have that opportunity to learn. I think there is going to be more communication among the native-born as well as the newcomers. It would certainly help the children and students to integrate better into the community.

Chairman Silipo has said there are a lot of students of different backgrounds taking up different heritage languages, particularly Chinese. You can see there is a lot of exchange, in terms of culture, in terms of values, in terms of the whole communication and lifestyle. Our meaning of culture and values encompasses more than just song and dance; we are talking about how people live, what kind of work they do and the whole lifestyle part of it.

You can see just from the recent sad events happening in China. Look around the reporters. Most of them are Caucasians. They probably learned Mandarin or Chinese in order to be able to cover such important world events.

You are talking about all the benefits of having another language, be it Chinese or any other language. In terms of employment, in terms of professional development, in terms of the phasing when encountering the globalization of the economy, in terms of trade, in terms of business, in terms of cultural exchange, I think having another language is definitely an asset.

I think you could see that people learning more languages would have a much better chance of being able to obtain jobs, like in British Columbia, where I originally came from. A lot of the times you have to know Japanese in order to find a summer job in the tourism industry. Similarly, it probably happens in various parts of Ontario too.

When I did a tally in the separate school board, the number of Italian-language classes offered amounts to more than 700 classes. You are looking at the ramifications of that, which means that kids who went through the Metropolitan Separate School Board probably learned English and French as well as Italian. I saw a lot more teenagers of Italian descent who speak fluently in three languages and I think that is a real plus for the Ontario economy.

I am not saying that really applies to the Chinese language. We might not have the population to support that yet, but at the same time, when you look at the Toronto school board, we have over 4,000 students of Chinese descent as well as other students who are taking the Chinese language, which amounts to the highest number of students being in the Chinese language. We have to commend the Toronto school board for having supported the language for the past 11 years and, hopefully, we will still be coming on strong.

Maybe what I can do is recap a little bit how the Toronto Chinese Parents Association is involved in the whole issue. There was a lot of parental participation way back in 1973 in terms of developing a so-called bi-bi program. I do not know whether you are aware of it. It was initiated by the Ogden and Orde Street schools, which are two of the major inner-city schools.

By 1978, some of the Chinese-language programs had become integrated in day school. Then for the whole 10 years since, there were lots of parents who participated in the program planning and they even did delivery, because there are a lot of teachers involved in teaching the children on a half-volunteer basis as well as on a support level.

I do not know whether you are aware that we just had a very successful second annual poetry recital by the children of heritage-language classes in the Toronto school board. It was very well attended. It was filled with parents, teachers and students at the Harbord school and it was very successful.

I was involved way back with the cultural equity advisory committee and the position paper saying that there are so many things that the province as well as different school boards can try, and have tried, to involve parents. To be honest, in terms of cost-effectiveness, heritage language is one of the very few things that the province or school board can take on to involve parents as a community, as a student community and as a parent community as well as a general community, in terms of integrating the concerns of the constituency.

On a sad note, we realize that the parents in Scarborough have been lobbying for the past eight or 10 years to try to get the board of education in Scarborough to support the heritage-language initiative. Unfortunately, I think they are still having some difficulty. We really appreciate that the province has taken the initiative to introduce a bill to amend this Education Act, to ensure that students of Chinese descent have an opportunity to take up Chinese-language classes under the Scarborough Board of Education.

1730

I guess there are always school boards saying, "We might not have enough money." When you think about it, the province put in a lot of the transfer payments, I guess, that support the heritage language and in fact the local school boards did not have to put up as much money as they claimed. So I hoped



the province would lobby on behalf of the Chinese-Canadian parents in terms of getting some heritage-language classes with the Scarborough board.

This is almost the end of my presentation. When we think about multiculturalism, we think about it away back, probably five or 10 years ago when we thought, "Boy, well, we eat Chinese food; that means that we understand that community." People could verbalize: "Oh, gee, we have some Chinese friends. We just went to look at some folk-dancing and that kind of thing." I think for the past 10 years the meaning of multiculturalism actually has evolved in dealing with the whole issue of access, hopefully for the better, access to services and access to the education system itself. Because parents might not speak the English language fluently, many times they are not getting enough access to the educational system.

What we like to see is multiculturalism as an empowerment of the different ethnocultural groups to be part of the community; to integrate bilaterally; to have access to the whole socioeconomic structure and the educational system is certainly one of the very means for the younger generation, as well as for the parents who could be involved in that.

I guess I should just end with a saying that I am sure you may have heard, which goes like this, "Unilingualism is a disease, but it can be cured by learning another language." I would really strongly recommend that the province bring the bill in. Hopefully you could implement the act within the next few months so that language classes can be set up to serve the constituency.

The Chairman: We have about 15 minutes left for questions.

Mr Adams: Ms Ng, I am delighted that you are so supportive of the legislation. It seems to me that from Mr Silipo's presentation before and from what you said, the Chinese community in Metropolitan Toronto has been very successful in retaining its language, even though you are glad to have this support. In my own community of Peterborough too, where we have Chinese citizens who I think are into the fourth generation, I would have said that here is a group which has been remarkably successful in passing the language from one generation to the next among people who have been born in Canada.

I wonder about the extent to which there is a variety in the Chinese community. I know there is Mandarin and Cantonese, but could you explain to me whether those are two situations or whether in fact within each of those groups, which are very large groups, there are varieties which are as great as, say, the differences between English and French? Are we thinking of two things there?

Ms Ng: Actually, you are right in terms of the community itself. It is not homogeneous. People come from South Africa, Brazil and Cuba with all different kinds of Chinese descent. The mother language might not even be the Chinese that I am talking about. Certainly there are differences, but I have to tell you that there is only one written Chinese, which helps communicate in terms of reading materials and that kind of communication. What you are talking about are the differences among the different groups—

Mr Adams: For example, if there were the minimum number of students for a class and they were Cantonese—just for the sake of argument—would we in fact be dealing with 25 students who would want to learn the same language?

Ms Ng: Yes. I think it depends on the locality, definitely. If you



are talking about Peterborough, I do not know how big the community is up there, and 25 is a fairly high number for some out of the Metropolitan Toronto area because the community is much smaller.

Mr Adams: I think, for example, in Peterborough there would certainly be 25 Chinese. I simply wondered if their need in the class would be the same. Let's assume they just spoke Cantonese, their families spoke Cantonese and they come from different places. Would their parents be satisfied with one language of instruction if they were Cantonese—forget the Mandarin?

Ms Ng: I would say, probably yes. In fact, the parents sometimes have a tough time trying to convince the kids to go to classes. Sometimes I think we also have to look at it from the point of view that parents want the kids to do it, but at the same time kids might not want to do it because they have other things to do. So I would say, probably.

Mrs Cunningham: You talked a lot about the needs of the parents when it came to communicating in English. How do you see the parents best being served?

Ms Ng: In terms of parents' service there need to be more cultural interpreters within the school system, such as what they have in the Board of Education for the City of Toronto with the school-community advisers. That would help bridge that gap when the parents are trying to pick up second-language training. Also, there is the communication within the school. If there are major things happening in the school, it would be really helpful if the school board or the school could have someone translate them into brief notes which could be sent through the children to the parents.

Mrs Cunningham: Do you have, to your knowledge, any adult day schools where the English-as-a-second-language program can be taught?

Ms Ng: Yes, I think there are a lot around, at least in the Metro Toronto area, either in community bases or in colleges for which the community information centres sign up people. I think there are a lot of day schools for adults learning English. I could assure you that all newcomers who do not know English are always aiming to learn the language if they can afford to.

Mrs Cunningham: I noticed you talked about it depending on the locality when one is providing these classes. I was curious about that. It is tough finding time to go to classes. That is not new, of course. That has been going on for a long time. Were your parents involved in learning English?

Ms Ng: My parents know some English, not necessarily very good English. Yes, they do. In fact, you are looking at a community that is really eager to learn English and have the kids do as well as they could within the school system. You have a very highly motivated community. I am not saying totally, but a very high percentage within our community.

Mrs Cunningham: I would agree with that. Did you have heritage-language classes yourself as a young girl in Toronto?

Ms Ng: No, actually I did not grow up here. I grew up in Hong Kong, but I know a lot of native-born adults about my age—which I am not going to tell you—

Mr R. F. Johnston: Young, let's say.

Ms Ng:—yes, young—who really went through very difficult years, when they were younger, trying to get language training. They did not get a whole lot of support at the school board level, but just within the community level. Certainly, there are a lot of things to be improved.

Mrs Cunningham: I am curious; when you say "language training," are you talking about English?

Ms Ng: No.

Mrs Cunningham: You are talking about Chinese.

Ms Ng: I am talking about Chinese, yes.

Mrs Cunningham: Okay, and you are saying it was more incidental and probably supported by parents and not supported by the school boards. These are your friends you are talking about?

Ms Ng: Historically, I think there is a lot of change in Ontario. I am actually bringing in some perspective from British Columbia, which is quite a lot less progressive—let me put it this way—in terms of the heritage retention and preservation area. There is so much difference from province to province. In Alberta we have bilingual education; even in Manitoba. I am looking forward to having Ontario move that way, to have bilingual education.

Also, I think there is a lot of saying, "How could we afford that money?" I think of employment equity. You hire people of different cultures teaching within the school system and my guess is that is exactly what happened with the Toronto school board. They hire a lot of Italian-speaking teachers whom they could fairly well integrate into trilingual education. I think if the school system or the province committed to do it, one day we would be able to reach that.

Mrs Cunningham: Quite frankly, the reason we did not move quickly in French education in this province is because we did not have people to teach it. The worse thing you can do with a second language is not have the best teacher; otherwise you turn young people off.

Ms Ng: Yes, I agree.

Mrs Cunningham: I appreciate your comment and I think it will be a matter of time. The availability of teachers is still the greatest challenge we have for second-language learning in this province. I appreciated your presentation today.

Mr R. F. Johnston: I think the teachers are there within the communities themselves and we have shown that, the way the whole programs have developed already. I also think the emphasis should be made again about how important it is to have people who can deal in the heritage language of the people in a community right there in the school during the day. It is a very important resource. When the heritage languages were added to the school day in Toronto, all of a sudden the Portuguese people felt better about coming into the school because they knew there was somebody there who could translate for them. That point has not been made very much today.

My question is about bilingual education. The Orde school and a couple of the other schools with high Chinese populations in Toronto have had the longest tradition of heritage-language instruction within a school day. Are

they ready, in your view, to put pressure on the Toronto board to demand of my friend the parliamentary assistant that it is time for bilingual experiments in those schools? Do you think the parents in those schools would be interested?

Ms Ng: I think they are in fact talking to the principal at the Orde school and she said that her students are trilingual. It is actually beyond bilingual. Some of the kids take English, French and Chinese and some of the kids even go on to a different dialect in Chinese, like Mandarin or Cantonese. I think it would be really exciting to see some of the pilot projects that could be started in schools which have a very good base of support from parents as well as the student population.

The Chairman: Thank you very much, Ms Ng, for coming before the committee. It was a very delightful presentation and the committee members certainly showed a lot of interest with their questions. This concludes today's hearings.

I would like to thank the committee members for their support and also to remind you that we will begin tomorrow immediately following routine proceedings, assuming all goes well, with the conclusion of Bill 5, starting with questions to the parliamentary assistant, representing the minister, and then on to our consideration of the bill and, hopefully, conclusion of that within an hour, so that we can move on to ministry presentation and questions on Bill 211. The committee stands adjourned until tomorrow.

The committee adjourned at 1744.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

EDUCATION AMENDMENT ACT, 1989

RENTAL HOUSING PROTECTION ACT, 1989

TUESDAY, 20 JUNE 1989





STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitution:

Breaugh, Michael J. (Oshawa NDP) for Mr Allen

Also taking part:

Nixon, J. Bradford (York Mills L)

Clerk: Decker, Todd

Clerk pro tem: Manikel, Tannis

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Williams, Frank N., Legislative Counsel

Witnesses:

From the Ministry of Housing:

Laverty, Patrick, Director, Rent Review Policy Branch

Taylor, Susan, Co-ordinator, Rental Housing Protection Program

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 20 June 1989

The committee met at 1532 in room 151.

EDUCATION AMENDMENT ACT, 1989  
(continued)

Consideration of Bill 5, An Act to amend the Education Act.

The Chairman: The meeting will come to order. This is a meeting of the standing committee on social development convened to consider Bill 5, An Act to amend the Education Act, dealing with heritage languages.

The committee has completed its hearings over the last few days and has determined today to attempt to conclude with discussion of the bill, but prior to that, a request has been made to permit some questions to the parliamentary assistant to the Minister of Education, in that the earlier agreement to waive the presentation was amended to allow approximately half an hour to have some general discussion by way of question and answer to the parliamentary assistant.

Mr Beer, do you have any opening comments before we go to that?

Mr Beer: I thought in this part, frankly, I would try to leave the time for my two colleagues to perhaps raise specific issues and comments and when we get to the clause-by-clause, I can comment more specifically on the act.

I did want to note that the other day we said that we would distribute a copy of the list of members of the provincial advisory committee and I believe that has been distributed, as well as the table of contents for the program resource guide that the advisory committee is looking at. I passed those out by way of information to members of the committee.

The Chairman: Is this advisory committee currently under way and will it be working through the summer?

Mr Beer: Yes. Following the statement by the minister last October, this committee was constituted at the end of the year or early in January. It has had several meetings and its specific mandate is to develop the program resource guide. That will be going out, hopefully, in the not-too-distant future to all of the various players, school boards, community groups and so on, for reaction and input and then, based on that, a final copy will be put out.

As you can see, there is a fairly broad membership on that committee. What we have tried to do is to indicate the board, where it is a question of the board person, and what organization nominated that particular person to the committee. Mr McKeown, who is with the Centre for Early Childhood and Elementary Education, has been with us through the presentations. He is the project leader along with Mr Broschart. That is by way of information, and the table of contents is more specifically what it is they are working on in terms of that resource guide.

Mr R. F. Johnston: As the parliamentary assistant knows, my interest in holding public hearings, I guess, is not an issue or problem at all with Bill 5 as far as it goes, but rather is in dealing with the question about how far it goes and where we as a Legislature and you as a government are going from here on the whole question of heritage languages.

In my speech on second reading, I tried to put that in a context of language instruction in general, in our notion of status of languages, etc. I know there has been a tendency by not just your government but by its predecessor to look at these things separately and to think of heritage languages as quite distinct and as a continuing education option rather than as part of the language package that is there for second- and third-language instruction.

If I can summarize the groups that were in favour of Bill 5, which were the vast majority of groups that came before the committee these last few days—what these groups were trying to say, the multicultural community especially, was that while they are happy with the Scarborough amendment mandating the board's requirement to respond to parents when there are sufficient numbers—and the regulations that will go along with the bill will say 25 parents—they also saw some problems with the model.

The example that was used yesterday a couple of times was that a board like my own in Scarborough, which has steadfastly decided not to listen to its own communities for the last 10 years, whether it is the Chinese or the Greek community in my area, as they have requested the incorporation of the provincial program for heritage languages in the school system, now will have the option of going to one of the three models that are available to it: the integrated day, the after-school hours or the weekend programs. The weekend programs are usually Saturday morning programs; at least that is what has been the case in Scarborough very much up until this point. They might very much take one of the less effective models.

I think we have heard from the chairman of the Toronto Board of Education, with its experience in this field, that the after-school program, generally speaking, is not as effective as the integrated day program, nor is the weekend program as effective. In the Toronto situation, of course, the weekend program often involves weekends—weekend activity, not just Saturday morning activity—and that is one of the reasons that it tends to be more efficacious than an after-school program.

I am concerned that here we are finally with Scarborough's problems put to bed, if I can put it that way, or seemingly done so, with this easy amendment to the present act, yet we are not coming to grips with what the most effective ways are of bringing forward heritage languages from the experience that is there, either with the Metro Toronto Separate School Board, which has been doing it for many years, or the Toronto Board of Education more recently.

1540

The real question is, where does the government go from here? I can interpret what has taken place in the last two years as a dead ending of this issue, just by looking at what happened. In the context of Bill 80, which is a very progressive piece of legislation in the sense of offering many options, including language-of-instruction options for transition courses, being presented before this very committee two years ago, the government brought in its yellow paper offering a lesser range of options. After a couple of years

of getting feedback on that, the government just now is coming in with the Scarborough amendment and a few of the other matters in the paper. Therefore, that can be seen to be the end of it at this stage.

I am very anxious to hear very particularly and specifically from the parliamentary assistant what steps and what process the government is willing to put into action at this stage to move the issue along, whether it is in terms of getting away from some of the myths that have developed around the supposed, quote, problems with heritage languages, involving the various cultural communities in discussions of what the evolution of heritage languages should be, or looking at heritage language as a component of language instruction policy in the province of Ontario, in the sense of helping people preserve a language and therefore perhaps at the secondary and post-secondary level use that language more effectively than they have been able to do in past times.

I am not asking you to tell me when you are going to bring in specific legislation, although that would be a supplementary issue I would like to raise with you when I hear your response to this general, ambling preamble. I am more interested in knowing just what vehicles there are to ensure that this is not deadended and the process gets started. What can you tell us specifically about what you are willing to do in that area?

Mr Beer: To my colleague, I would begin by saying that we view this as an active and positive process in particular in that what we were seeking to do with the amendment to the Education Act was guarantee access. As a result of this change, under certain conditions, children in the province will have access to the program. I think that was meant in a very positive and ongoing sense. I certainly would not want to have the impression left that we see this as, to use Richard's term, deadending.

I think that within the number of proposals that we have initiated flowing from this amendment, the teacher-in-service programs, the development of the resources and the establishment of the provincial advisory committee—and if one looks at the table of contents, the kinds of things that are going to have to be dealt with there lead to other things that are going to have to be dealt with—there is going to be monitoring of the program and a review process initiated.

We have to recognize that there are still some things that we do not know. Certainly in the hearings, particularly in Metro Toronto, we recognize that there may be, indeed there is, interest in perhaps moving farther with this program at this particular time. I mentioned in my own remarks in the House at the time of second reading that, given the issue of language, to a certain extent what we are trying to do is make sure that everyone has a sense and an understanding of what this program is. I think your point about myths is an important one.

When one recognizes that there are close to 100,000 children in the program, not all of whom are in Metro Toronto but perhaps some 25,000 to 30,000 outside, I think there is growing recognition of the positive values of this program and we are going to see that reflected in the work that goes on. For example, with respect to the review within the ministry of the modern languages program that we have at the secondary level, I think now there is clear recognition of looking at developments in that area also in terms of what the language initiatives and programs are that we are doing through this program and others at the elementary level; the comments that were made about the number, at least in Toronto, of children who are not of a particular language group but who are participating in heritage-language programs.



I think the way I would want to put it is that we see this initiative as part of a process in the ongoing involvement of community groups and educators, both through the provincial advisory committee that has been set up with the specific mandate of dealing with the resource guide and also as those committees evolve. That dialogue and discussion will continue, and I suspect that, again, from what was said by some of the people who came before us, there may be requests from some boards to look at particular initiatives that might be of help as we go forward.

There is a process and this is part of a building-block process in a sense, but there still are a lot of things that we have to work out in terms of where we might go with this particular program and how we would do it. I think we recognize that we will be discussing and reviewing and monitoring this program in a proactive way and not just sitting back and saying this is the end.

Mr R. F. Johnston: I want to know more, particularly about what the vehicles are. Right at the moment, you have an advisory committee which has a very specific mandate, and it is just to deal with the resource material for the program as it exists today. But is there a mechanism, a vehicle that can be established, bringing together the federations, the boards, the parents and the cultural groups to have an ongoing, fairly nonthreatening, if you want, discussion about where this should be going? What are the permissive grounds, forgetting the mandated grounds, for growth?

As far as I know, there is no body at the moment that is set up specifically to do that, looking at heritage languages alone or as they touch French instruction or English-as-a-second-language instruction or as they touch core French or extended French or as they touch a particular language instruction at the secondary level.

I am looking for the fact that ending this Bill 5 right now and not having a vehicle in place is like saying this is not a huge priority and this can really just simmer for years, whereas saying that you are willing to start to try to put together that kind of vehicle would be a signal to these groups that in fact you are interested in their permissive experimentation and development of this.

Mr Beer: While its specific mandate at the outset is to look at the question of the resource guide, I think we all recognize that the establishment of the provincial advisory committee is critical. It seems to me that a number of things flow from that around curriculum, and because the membership of that committee does involve representatives from both the educational community and community groups and because the minister has referred to a five-year monitoring and review period, it is out of that that we will evolve a more specific process that will allow people to bring their concerns forward.

I do not think that whether the provincial committee is presently constituted would necessarily be the vehicle, or whether it would be something else. I think there is a recognition that we are very intent. Through the research project, we want to find out how these programs work. We heard evidence from some people that suggested that a second and third language might not necessarily help. Yet we know from other evidence, and what I had thought was pretty clear evidence, that that can be very helpful to children. That research project and the money that is going into that, the money that is going into the resource development, is going to mean that we are actively looking at all those issues.

Whether that will lead to some kind of more specific advisory council, I am not sure, and I do not think we know what the appropriate vehicle would be, but I think the nucleus is there in the advisory committee we have set up and something will evolve from that.

1550

Mr R. F. Johnston: I admit there is a fair amount of talent in your advisory group. Is it appointed by the minister through order in council or whatever at this point?

Mr Beer: Yes.

Mr R. F. Johnston: I just suggest to you that if you do go the route of having an ongoing development of this, as has been said to us as a select committee in the past, it would be very important to try to get the Ontario Teachers' Federation and others to maybe delegate their people to this rather than the individual style of selection that seems to be involved in this. I would hope that would be the evolution we would expect in the next little while.

Mr Beer: I think that in terms of that particular group, the intent was to deal with the immediate issue. I believe its members were appointed by the ministry; I do not think they were order in council. As you say, when you look at the people there, certainly one has a lot of expertise, both from the community and from the educational establishment, but I take your point that if we were moving in a more formal sense, for this program to go forward clearly we would want to have the teachers very much involved because there are a number of issues that flow from that.

Mr R. F. Johnston: I have one matter and then Mr Jackson can go on from there. I know he has a number of accountability-style questions he wants to ask.

I have a specific interest in the question of experimentation with languages of instruction other than English or French, especially after the reading I have done now over the last few years about what is being done in Alberta in bilingual schools, and in Saskatchewan and Manitoba, where some of the academic results are really quite stunning, especially in the Alberta examples.

Under our legislation, we are presently limited to instruction in English and French. We have English as a second language of course as a means of dealing with some sort of transition and we have had a couple of experiments with transitional language instruction that have taken place over the years. But at the moment the Education Act does not even permissively allow boards that are ready—at schools like the Orde Street school in Toronto that we have heard so much about that had had Chinese heritage language now and about 50 per cent of the school population is Chinese—to try another mode of study, another mode of instruction. At the moment, there is no mechanism for doing that except stretching heritage language as it is presently defined to unrealistic lengths.

I guess I am wondering where the government's mindset is at the moment in terms of looking at that kind of small, permissive amendment that would allow boards that wish to deal with this matter, not as a continuing-ed issue but as a language-of-instruction issue.

Mr Beer: I would like to make two points. First off, we want to be a little bit careful in the comparisons we make of what we are doing and what is happening in Alberta and Saskatchewan in this sense: In terms of numbers, our program, with close to 100,000 pupils involved, is still a much, much larger program. Even in Alberta and Saskatchewan you are really limited to Edmonton and Saskatoon where there is an attempt to develop a bilingual program in the sense of, say, the heritage language and English. As we look at our own program and where we go, I think we do have to be more cognizant of the availability of teachers, resources and how many languages we might get involved in.

Mr R. F. Johnston: I do not buy those arguments. They were raised all the time in 1987. In fact, they are nonexistent arguments. You know that in Alberta there is a bilingual school with Arabic being taught, for goodness sake, and you know the numbers they are dealing with there. We have the potential for resources to support our schools here that is much larger than the Arab population could possibly provide in Alberta, and yet they do it.

It is not unlike the argument Scarborough always put up when it wanted not to have heritage language during the day, or that we heard from the boards in Ontario. It is the same kind of mindset. Certainly, it is different, but I do not think it is any harder to do here what they have done there, or that the demands from the community are any less realistic than they were in Alberta.

Nobody in the multicultural community expects enormous expense and disruption of the present education system in order to be able to provide bilingual schools. They are talking about schools like Orde Street Junior Public School where 50 per cent of the kids are Chinese. They are not talking about doing it where you have 10 per cent of the kids of one particular language group. There they might want some enhancement, but not a bilingual school.

Mr Beer: I was trying to start, perhaps on a—

Mr R. F. Johnston: Negative note.

Mr Beer: —less positive note, but to move to a more positive one when Mr Johnston jumped in, so let me see if I can assuage him somewhat. I mention simply that I think there are perhaps still some things we have to look at very carefully in terms of where we go, but being very mindful of what the chairman of, I think it was the Toronto board who was before us, talked about, the possibility of pilot projects. I think we want to make sure we have this program in place on a province-wide basis. I think we would certainly be open to discussing, in the case of the Toronto board, ideas that it has, but as I say, being mindful that one wants to proceed in a very organized and appropriate manner.

These are the questions that certainly are on the table and we are aware of some of the things they want to do. I simply say that I think that as those requests come forward, we are going to sit down and look at them and work with the groups on that.

The Chairman: I would like to leave some time for Mr Jackson to present his questions to the parliamentary assistant.

Mr Jackson: My first question is, what is the status of the regs for this bill?

Mr Beer: They are at legislative counsel and we hope we will have them in the very near future. As soon as they are ready, they will be distributed. I think you received the synopsis of the regs and they are following that pattern. As soon as they are ready, you will have them.

Mr Jackson: The synopsis of the regs, was that widely distributed?

Mr Beer: I know it went to your office.

Mr Jackson: That is it? Other members of the committee or just the two opposition critics?

Mr Beer: I know they went to you; I do not know that they were distributed more broadly. I think we passed them on to your office.

Mr Jackson: At what point were they shared with the advisory committee, or have they been shared with the advisory committee?

Mr Beer: Remember that the advisory committee has been looking specifically at the program resource guide. I do not know they have necessarily discussed the regulations. What they have been focusing on is what is in the table of contents I distributed. They have now prepared a document in draft form that speaks to this table of contents and that will be circulated to all of the boards and the community groups, I think, fairly shortly.

If I could, because it came up yesterday, Mr Jackson, the provincial advisory committee's function is specifically to develop the program resource guide at this point. It is not an advisory council, if you like, on the whole program. What they were charged with by the minister was to develop that guide as soon as possible, so that is what they have been concentrating on. They have had two or three meetings since January.

Mr R. F. Johnston: Four.

Mr Beer: How many? Four?

Mr R. F. Johnston: No, you said two or three before.

Mr Beer: Oh, sorry. Okay.

Mr Jackson: Is it two or three, or three or four?

Mr Beer: Two or three.

Mr Jackson: Two or three.

Mr R. F. Johnston: Slippery slope.

Mr Jackson: Slippery slope.

Mr Beer: But that is now in draft form.

Mr Jackson: Perhaps you could be a little more specific with respect to what I understand the minister referred to in one of his statements, about



an advisory committee on this bill separate and distinct from that group that is developing the resource guide.

Mr Beer: I am not quite sure of the specific reference, but as I was saying to Mr Johnston, I think we see this provincial advisory committee developing the resource guide, looking at some curriculum questions and then really out of that, what is the next appropriate step? Is it to establish some kind of more formal advisory committee or council, or what would be an appropriate mechanism?

1600

Mr Jackson: That is for the whole province?

Mr Beer: Yes.

Mr Jackson: For the minister on this subject area?

Mr Beer: That is right.

Mr Jackson: But the minister also speaks to the issue of individual advisory groups within boards. Who is developing the criteria and terms of reference for that, and is that in the regulations?

Mr Beer: The advisory committees that could be constituted at the local level would be constituted by the boards. Those are not mandated. In other words, they are not required, but a board may establish an advisory committee.

Mr Jackson: So it is permissible, but it is not required.

Mr Beer: It is not mandatory, no.

Mr Jackson: Now, I am surprised at that. You do not have terms of reference for that as yet?

Mr Beer: No.

Mr Jackson: Do I understand you correctly? Okay.

Mr Beer: Frankly, I think one of the reasons for that was to allow boards to establish committees that would meet the particular needs of their area. There may at some point in the future be a need to have something more formalized, but at the present time, the intent was to let the communities and boards work together to develop that kind of mechanism.

Mr Jackson: I am trying to envisage when a program goes from optional to mandatory, but in this instance, with Bill 5, it also changes its shape as it moves out of the direct linkage of language and heritage for enrolment, to the option or choice of a child and his or her family to enter the program. It strikes me that Bill 5 changes the approach to heritage language on those two fronts and that where boards may experience difficulty will be with groups that previously have not had access to the program. We are hearing they are not too frequent.

This is not a response to groups that have been turned down, with the exception of Scarborough's, and that problem has been overcome. But it might lend itself to groups of families within a language culture and groups outside

of that language culture coming together and requesting it, as would be their right. But it strikes me that somehow there should be some mechanism in order to deal with how feasible that would be.

Mr Beer: When you look at the present practice and what the minister was talking about in the way the program would look after Bill 5, it still seems to me that essentially, in setting up the program, the patterns are not necessarily going to change all that much. In those areas where you have more limited numbers or smaller populations of different groups, I would suspect that for the most part the request for the heritage language will come from that particular language group.

Where a board decides to do an integrated-day or extended-day program, I suspect there in a sense one might see more children from other language groups who might participate in that program. But in looking at some board areas that have programs I am aware of, I do not see that as necessarily being a problem that would evolve or that there is any particular mechanism needed to deal with that.

Mr Jackson: I can see matters that require some degree of arbitration. If a school board determines: "Yes, we will comply with the requests for the program, but our only available space is in this school so far down the road. Busing would take 45 minutes to get there so the program can only be about one half-hour in length and then they have to take a 45-minute bus ride back," I am trying to determine on the basis of where those kinds of concerns are arbitrated.

Having been a trustee, I can cite to you half a dozen examples when we have had to respond with developing something in order to ensure the public gets a fair chance at determining what is in the best interests of the child and is economically feasible. Those kinds of problems occur quite frequently in education, especially under the current funding arrangements.

Mr Beer: I suppose we can anticipate potential problems and certainly in some cases there may be transportation difficulties. At the present time, that is up to the parent.

Mr Jackson: The board is required to pay for it under your legislation. Come September, the busing will now be paid for, for all programs in Ontario. This is not about all new programs. This is every heritage-language program that previously was not covered.

Mr Beer: No.

Mr Jackson: I see staff shaking their heads.

Mr Beer: No. This is what I was saying: The heritage-language program does not involve busing. Transportation remains the parents' responsibility. In some areas such as York region, where I am from, that has worked out in terms of the development of the programs that the York Region Roman Catholic Separate School Board has done.

When you recognize the number of pupils who are involved in these programs even outside of Metro, I would see that continuing, again, depending on how the board decides to operate the program, but it is not intended that transportation be provided by the board under these regulations.

Mr Jackson: Can you explain to me a little more clearly what was implied in the synopsis of the regulations with respect to programs that can be purchased from other boards and/or private schools? Could we have your understanding of how that is going to operate?

I had raised a question earlier about whether or not that allowed for or prohibited programs to be jointly provided with the coterminous separate school board or whether the public students could attend the separate board. Could you make that a little clearer for me, because I am having difficulty understanding how that really works?

Mr Beer: I will try. First of all, each board would have the responsibility of creating a program if 25 parents came forward. It is clear also that a separate board and a public board can work together on a program. For example, if there is already a separate board program that exists in a certain language, it would be possible for the public board to say, "Look, if you have that program under way, we have had a certain request and were about to start a program in another language group," and they could come to some arrangement around that.

In terms of where the program is run or where it takes place, that would be the responsibility of the specific board. It would be the board's decision, but the board could choose to operate the program in another facility. Whether that is in a community centre or at a private school, that would be up to the board, but it would have to ensure that the way in which that program operated, the time of operation and so on, would allow access by anyone within the board's jurisdiction.

Mr Jackson: I am talking about a purchase of service; it is just like a purchase-of-service agreement.

Mr Beer: Yes. The two boards can work out an arrangement or program between the two of them, and presumably that would be something where they would sit down and determine that if the public board is going to operate the program with a certain number of public students, then the separate board is not obligated to accept students from the other board, and neither is the public board. But they may do so, and certainly there has been discussion among some boards about how they might do that.

I think it would be up to them to work out the arrangements. Whether that would then mean simply that the board that was sending students to the other board would send the grant, or how that would work, that would presumably be up to them.

1610

Mr Jackson: Almost every board has a prohibition in terms of those kinds of arrangements, unless it is tied to the capitalicity of one or two of the public school parents. I guess I am trying to get a better handle on this notion of what it means to simply say, "If they mutually agree to." I will put it another way. There is nothing like this in the regulations for this program. Rather than being a restriction, if it were an option that the government said was available, that would change some of what was going on in Bill 30. That is what I am trying to get a sense of. If nothing changes under Bill 30, then we can anticipate fairly well that there will not be exchanges of students between public and coterminous separate boards on language grounds

Mr Beer: Let me try to be clearer. The board that operates the

program is the board that receives the grants. So if the public board sets up a program and accepts students who are from the separate system, then the board operating the program directly receives the grant. In that sense there would not be a purchase of service, because those students would be enrolled in the program and the money would flow with the student. Presumably the two boards could sit down and they might want to discuss what languages each was going to provide the program in and simply come to some kind of agreement themselves, with a letter of agreement or whatever, that they would be willing to accept students from either board grouping to participate in those classes. Then, from the ministry's point of view, the funding would go to the board operating the program.

Mr Jackson: Is it the same base-rate funding for adult and continuing education, the full grant rate? Is that the same in all boards in Ontario or is there a formula adjustment?

Mr Beer: To the best of my knowledge, it is \$37.50.

Mr Jackson: Regardless, for whichever board?

Mr Beer: Yes. I just had to get a nod on that one, but it is \$37.50 and that goes for the student.

Mr Jackson: Okay. Just so I can recap now, is it mandatory when 25 or more students present themselves?

Mr Beer: Parents.

Mr Jackson: The parents of 25 students, to be more exact.

Mr Beer: Yes, right.

Mr Jackson: It is not 25 parents. It is the parents of 25 students.

Mr Beer: We are getting all confused here. It is upon the request of the parents of 25 qualified students. Mr Johnston nods sagely.

Mr Jackson: All students are qualified. Why would you say "qualified students"?

Mr R. F. Johnston: Mr Adams has 25 kids that he just brought in.

Mr Beer: Yes, we are just starting with requests here. We are going to demonstrate the process.

Mr Adams: These students are very interested in the heritage-language legislation.

Mr Beer: They would make the request and then the program would be constituted.

Mr Jackson: I am trying to get a better handle on this. Perhaps it is because of Mr Johnston's and my own overinvolvement with Bill 30 that I have got some memory pegs with respect to where we made some clear distinctions in Bill 30. I am trying to understand the exact nature of how heritage language fits into its relationship between coterminous separate and francophone boards.



If there are insufficient numbers for a given program in my own board, the Halton Board of Education—say there are parents of 20 children for a language in the public board and 20 in the separate board—as I interpret this legislation, the combination of those two groups seeking at least one program in fact would not be able to cause a program to be created.

Mr Beer: That is correct.

Mr Jackson: Would the Halton Roman Catholic Separate School Board be able to take the 20 children and their parents and contact five or six from the public system? We would suspect that outside of school there would not be this division; there would be homogeneity of their own cultural group. They would then present themselves on the doorstep of the separate school board and say: "We could top up the numbers. We would therefore like to ask for the program."

What does the legislation say, or is it silent? Does the minister have a position on such a request? I am just trying to understand that point.

Mr Beer: The school board must create a program where the parents of 25 students of its board—

Mr Jackson: Eligible students?

Mr Beer: Eligible, yes. They have to set that up.

Mr Jackson: So "eligible" means from that board. Now I understand.

Mr Beer: The separate board is then quite free, though, to accept other children into that program, but the requirement to establish the program must come from the parents of eligible or qualified students of that system, separate or public. In other words, if there are 20 students whose parents have requested it, then the board does not have to do it.

Mr R. F. Johnston: But it might.

Mr Beer: Yes, and boards have.

Interjection: They can use the other 20, but they do not have to.

Mr Beer: No. With that request from 20, the board can go ahead and set up the program. Indeed, there are boards that have.

Mr Jackson: I am sorry I have taken so long just to get that understanding, because I have had some questions to my office about it.

Mr Beer: Is that clear now?

Mr Jackson: Very clear. I understand what "eligible student" now means, regardless of how many parents the students have.

I will leave evaluation, because it seems to be premature when the program under the new bill has not happened, but it is interesting to note that the minister wishes to evaluate. It begs the question as to what extent the government has been evaluating heritage-language programs to date. If heritage languages are so predominant within school boards across the province, why are we waiting five years to do the evaluation? Why are we not evaluating a program which the government leads us to believe is not going to

expand a great deal? In fact, this bill is not going to cause a whole series of programs to be created overnight.

Mr Beer: On the question of evaluation and research, I would say part of what we are doing is making funds available to do that. It would be fair to say, though, that a certain amount of research has been done through the Ontario Institute for Studies in Education and so on, which has provided information about the effectiveness of the programs that are in place.

It is probably fair to say—and I think our experience on the select committee showed us this—that in a broad number of areas the kind of data we sometimes would like to have on different programs are perhaps not as full as we would like. So one of the things we are very keen on doing from the outset, to supplement the research material that is available, is to really have a look at how these programs function and at the results of what is happening to the children who are taking those. We have stated there is a five-year period, but it is not that we are waiting until the end to do that.

Mr Jackson: That corresponds with when your funding moves into a period of uncertainty.

Mr Beer: All our lives are uncertain after five years.

Mr Jackson: After two and a half years for some.

My final question has to do with resource materials. I understand the work of the advisory committee, which may or may not continue its work several months from now, has been to develop a resource guide for school boards; but as for the development of the practical daily exercise books, textbooks and lesson plans, what I call learning materials, the minister addresses some special separate funds for that purpose.

Are you familiar with memorandum 109 released by your ministry on 30 March and which deals with learning materials?

Mr Beer: Not specifically.

Mr Jackson: David Paterson from the minister's office is looking through his book. Hopefully, he has a copy.

Mr Beer: Ask your question and they will rescue me.

Mr Jackson: It has to do with the fact that your ministry has announced that it has cancelled the program for learning resource materials development. Are heritage-language programs in that memorandum or outside that memorandum? It does indicate that French-language programs will continue for resource development.

1620

I am trying to interpret whether or not that means all those funds for English-language learning materials, mathematics, science, all of those program materials, are now cancelled by the government, which incidentally, according to the memo, states that it is because of severe budget restraints and that it regrets that certain of the projects it had committed will not be funded. Are we to believe that is where the minister is going to come up with the funds to provide for the resource materials, by eliminating them from the regular school programs?

Mr Beer: No. This is, has been and will be a separate program and those funds were committed for this.

Mr Jackson: Let me reword my question. Right now the government is spending money on developing resource learning materials for heritage-language programs. They were part of the global learning resources development fund.

Mr Beer: No. I think this is the point I am making, that this initiative is separate.

Mr Jackson: Forget the initiative. I am talking about last year or the year before. We have had heritage languages in this province for many years.

Mr Beer: But they are not part of that program.

Mr Jackson: So there has been no funding by the Ministry of Education on the issue of developing learning materials for heritage languages.

Mr Beer: I am not saying there has not been funding. I am just saying that this has always been operated apart from the two programs of English- and French-language materials, books and so on. This is a different program. It does not take away from that. In fact, if you look at the funding that is going into books and other things of that nature, I think you will see there has been quite an improvement in what is happening. What this is going to do is work together with community groups and educators to develop materials.

I think both you and Mr Johnston also raised the question about other countries' materials. In the European common market there have been arrangements among countries around certain materials. A number of European countries have asked us if they could enter into some arrangements around learning materials, and we are going to be discussing that with them. Obviously, we want to ensure Canadian content.

Mr Jackson: I am sorry, I will try to summarize and come to a conclusion in my line of questioning, but the purpose of my question is to determine whether these are, in fact, add-on dollars or whether these are reconstituted dollars.

The regular school program for the average Ontario child, for the regular day programming, that fund which was set up by the Ministry of Education to pay for the development of outstanding learning materials for children in this province, has been cancelled by the government. The one proviso was that they will allow the funding to continue for French instruction in this province, but not for English-language instruction.

My question is, can you satisfy this committee that those are not the funds which this government is now bringing to bear for heritage language?

The minister has assured us that there would be no denigration of the support for the public system, both the separate and public systems, as a result of an increased commitment to heritage language. I am not talking about grants, because we can get into an argument about whether the government has increased or decreased grants. I am talking about a program for learning materials that has been cancelled for regular day school learning materials, but the second- and third-language instruction commitments by the government will continue. That, to me, seems an inappropriate tradeoff. Since you were

unaware of the memo, you may be unaware that may be where the money is coming from. Perhaps you could look into that for us.

Mr Beer: First of all, I just want to stress that this is separate from, it is not related to, it is not taking money away from. This is a separate and independent program. I think in terms of the initiatives that we are taking with learning materials, with texts, what you will be seeing is the infusion of more dollars globally in that whole process, but this is not a program which is limiting the public program.

Mr Jackson: Where do these moneys go then? I would ask you to familiarize yourself before you respond.

Mr Beer: I will find out.

Mr Jackson: I have left the door open for you to go and familiarize yourself with it, because my understanding is that it is a sizeable amount of dollars which are now being cut back. The commitment evaporates, and therefore those dollars either go back to the Treasurer (Mr R. F. Nixon) or they are spent in education.

Mr Beer: I will certainly undertake to find out more in terms of that specific memorandum, but I would want to make clear that the development of this program was not in terms of taking money from that or from another one, but for new dollars.

Mr Jackson: The one cancels and the other one begins at approximately the same time. Could you please just report back to the members of the committee with respect to how much the program was funded, according to memorandum 109, what the loss of revenue to the learning materials development of this province will be, and what the dollar commitments are that the government feels it will be funding over the course of the next five or six years, whichever number of years your commitment is under this bill?

Mr Beer: This is five years and it is \$500,000 a year, in terms of this bill. But I will certainly do that.

Mr Jackson: I would appreciate it.

The Chairman: I think much of what perhaps needs to be said at this time could be said as part of the discussion on the bill, but Mr Johnston had another final question to ask.

Mr R. F. Johnston: I know you are working on a protocol with Portugal around its assistance with learning materials. You alluded to other countries. What other countries are in the position of developing protocols or discussions?

Mr Beer: The ones that have been in contact are Portugal, Greece, Germany and Italy. What we would be doing, obviously, is talking with them. I think you spoke about the protocols in the European common market, and there is a lot of interest there. Our concern is, obviously, to ensure that the materials that are going to be used in Ontario are ones that suit our needs, but there is a growing movement on a worldwide basis to try to share a lot of things—learning materials and so on—and I think we want to look at that very carefully. Manitoba, I think, has one program in place.

Mr R. F. Johnston: I have never heard a figure for the increase, I



presume, that you anticipate in enrolments or in boards participating in heritage-language programs for all that we have presently in the statistics that were given out before this mandated program develops. Have you done any projections of that in terms of what you anticipate the growth to be as a result of this bill?

Mr Beer: I was looking at some statistics the other day in terms of the last few years, because I think last year there were around 93,000 students. Under this, we are looking at perhaps another 10,000 or 12,000 that would be enrolled.

Mr R. F. Johnston: In the first year?

Mr Beer: I think over perhaps a couple of years.

Mr R. F. Johnston: Okay. I just wanted a ballpark figure.

The Chairman: Is the committee ready to begin discussion? Are there any amendments to the bill?

Discussion on section 1, which is the entire bill, in effect. Do the members wish to make any comments?

Section 1:

Mrs Cunningham: I think we heard many concerns about this piece of legislation; lots of support, but many concerns as well. It is a mammoth task that the government has taken on, with a very broad mandate from the committee. I am wondering what the process is for reporting back as to the progress of the committee. I am assuming that this is the line of attack, this table of contents.

The Chairman: The table of contents, as I understand it, is an outline for the resource guide that is being developed by the advisory committee.

1630

Mr Beer: That table of contents is for the resource guideline which will be produced and distributed in the not-too-distant future. In terms of how the committee sees how this program is developing, the estimates of the Ministry of Education would undoubtedly be a place where on an ongoing basis, on an annual basis, one would be able to ask questions and to see where the program is going and what is happening to it. That might be the most obvious place to carry on discussion of it.

Mrs Cunningham: My concern is this: This may be a resource guide, but as far as I am concerned, it is the delivery and evaluation of the program. It goes right into talk about the roles of parents, credit courses, promoting the language program within the community. Unless someone has done an awful lot of work on this, maybe the appropriate question right now would be: When will we see the results of this?

Mr Beer: The provincial advisory committee has put together a draft which, when finalized, will be going out to school boards, community groups, those who are involved in the program; the stakeholders, if you like. The ministry will be seeking input and reaction from them before then preparing the final document. I think the intent is to ensure that everyone who would have an interest would get to see this and be able to comment on it.

Mrs Cunningham: I am trying to figure out the relationship of the provincial advisory committee to this particular guide. I mean, there are 32 people on the advisory committee.

Mr Beer: That committee was charged with developing the guide and that is what it is doing. They will be meeting again when the reactions and the input comes back from the boards and the community organizations and the teachers.

Mrs Cunningham: To the guide?

Mr Beer: Yes.

Mrs Cunningham: When was this committee struck?

Mr Beer: At the time of the meeting in October when the minister made the announcement, the committee itself was then created and I think had its first meeting in January by the time they got everyone selected. They have had two or three meetings.

Mrs Cunningham: They have had some input into this table of contents, I suspect?

The Chairman: Yes. This comes from that committee.

Mrs Cunningham: I have one final question with regard to the report with today's date on it which the research office put together for us. One of the concerns had to do with the implementation date; on page 6, the time line "posed unreasonable implementation in September 1989." What does that mean? I never heard.

The Chairman: What document is that?

Mrs Cunningham: Page 6 of the document we were given today, the research, the work that went in with regard to concerns and support, the issues.

The Chairman: I think Mrs Cunningham is questioning the implementation. I understand that if the bill passes by the end of June, it is implemented in September?

Mrs Cunningham: Of 1989.

Mr Beer: I am sorry. I have not seen this document.

Mr R. F. Johnston: One of the groups before us—it might have been the boards, I cannot remember—indicated that that if this were to pass by the end of June, they thought the deadline which would have the program starting by the end of September was too soon for them to accomplish a number of things, so they raised that concern. There are two dates, as you know, one for 30 September and one for January 1990.

The Chairman: If I could put this in context, the document which Mrs Cunningham is referring to is the summary of concerns and recommendations raised by delegations, which is summarized by our research assistant, Alison Drummond. I am sure Alison is just delighted that a member of the committee noticed the document, but it was delivered to all of our offices this morning.

Mr Beer: I have not looked at it, but my understanding is that the intent is that the programs begin this fall. If there is some problem that arises, I suppose that will be considered at the time, but my understanding was that it was September.

Mrs Cunningham: I just have one thing to say about that, as a former school board trustee. If these are the kinds of guidelines and rationale we are going to be following, and anybody who is in the business of providing programs, I would expect, if this is supposed to go along with the bill as recommendations from the ministry to the local boards—Is it? What is the clout of this?

Mr Beer: Remember, we are talking, in most cases, about boards that have programs that are functioning. It is not as if one does not know what the nature of the program is. I think boards are aware of those facts.

What this resource guide is to do is in effect bring together for the first time in one place resources that will be available to all boards. But there is at present, even right now, all kinds of information and so on, whether we are talking about Scarborough or perhaps some other boards that may be beginning new programs. This resource guide will be tremendously useful, but you do not need it specifically in order to begin the program.

Mrs Cunningham: So we are just talking about a guide.

Mr Beer: Yes.

Mrs Cunningham: Most boards that would be looking at this will use it as a supplement to what they are already successfully doing.

Mr Beer: I should think so, yes.

Mrs Cunningham: That is it. That is the status of this document.

Mr Beer: Yes.

The Chairman: And this is not the guideline; this is simply a lifting of the table of contents in the guideline. The guideline is substantially more than this.

Mr Beer: That document, which will flesh out this table of contents, as I say, will be going to a whole group of players for comment and then will be finalized, but you would not need that to begin a program.

Mrs Cunningham: I am just cautioning. When one is looking at recruitment and selection, sometimes guidelines of the ministry can be used as weapons against the positive implementation of programs. If everyone understands that it is just that, a guideline and not something that some regional office is going to use to—Because it is not fair. They are, hopefully, recruiting now.

Mr Beer: Perhaps, if I might, I should note that the term is "provincial advisory committee for the development of a program resource guide." We should look at it in that context, that this is to be of assistance to the board in developing the program. We are, I think, or are trying to be, pretty conscious of the board and the community in a partnership—teachers, trustees, community—in developing the program. It does not have that kind of connotation, "Thou must do it in this way," but rather: "Look. Here is a whole

series of things which we have learned from the programs already in place that may assist you in developing new programs," or a new board in starting a new program.

Mrs Cunningham: So we can assure our boards, even if they do have 25 students, that it is not carved in stone that the programs will be up and running in September. That may not be a possibility.

Mr Beer: Yes.

Mrs Cunningham: That has been the great criticism of the government, that there is no support and sometimes not the funding, yet someone takes offence when boards do not get programs up. I am just raising this as an issue now.

Mr R. F. Johnston: On that very important point, I just have to say, if the government will not, that this bill was brought in last October. There was no substantive disagreement with it expressed in the House. The terms of when it would start have been understood for some time, in terms of the 90-day period after proclamation, that that would be the way it would be worked out; and the latest date, therefore, it would be going through the House would be 30 June, intending to get it by the late fall.

Boards that are not participating now and do not already have their staff in place, that have not taken the action to learn from other groups, or in London's or Scarborough's case, for instance, have not learned from the community groups that are already operating their programs how they are going to adjust if there is a demand, are boards which in my view have been irresponsible at this point.

Mr Beer: If I might, I was going to make that point. It sets out 90 days, as Mr Johnston has said. In speaking to the resource guide, those are two different elements. But assuming the legislation goes through by 30 June, by 1 October, if the parents of 25 children have requested a program, the board would work with those parents and the community in developing that program so it could begin 1 October. It would proceed at that time.

1640

Mrs Cunningham: What is the funding for this program?

Mr Beer: The funding level is \$37.50 per pupil, which is the same as it is now. I am sorry. I said per pupil, but it is per instructional hour.

Mrs Cunningham: Far be it from me to argue with my colleague sitting to my left, who is so experienced, but I think this is an excellent document. It is an objective one that has been prepared by the staff. In fact, it does send out some words of caution.

Mr R. F. Johnston: What it does is quote one group that had cautionary words.

Mrs Cunningham: No, there are about 17 issues here that have—

Mr R. F. Johnston: All from one group.

Mrs Cunningham: Not at all. Read it. Mr Chairman, I do not think everyone has read it thoroughly, but that is beside the point.



What we really should be concerned about, and the bottom line for me—I have been so involved in second- and third-language instruction, and the worst thing we can do to anybody is introduce a program where the excellence of the program on behalf of the children and their parents is not the prime objective. Sometimes when we are not well organized and we do not have the best instructors, that is what happens. Many of us around here have been involved in education and know that to be true.

I am just saying, "Be cautious." It should not be carved in stone. I think anyone's intention would be to respond to 25 students. You may get some boards that would argue that if the funding is not there—you are telling me it is there.

Mr Beer: It is.

Mrs Cunningham: I would expect then that it would fall into place, but I know what it is like to have to start something up over the summer when you do not even know how many students are there or what language you are going to be asked to provide a program in. I think there should be some degree of understanding given to board; that is all I am saying.

Mr Beer: We certainly appreciate that in beginning any program there can be certain difficulties, but I think we have had enough experience with this program. The comments the chairman of the Toronto board made around funding was that he felt this program in particular was one where the funding was solid. Those boards that may be starting new programs, I think, do have resources and assistance from neighbouring boards in order to begin.

I do not think we foresee any major problems in what extension there will be to the program. As we have said before, there are close to 100,000 and we see over the next couple of years maybe something on the order of another 10,000 being added to that.

The Chairman: Is the committee ready to vote?

Sections 1 to 3, inclusive, agreed to.

Title agreed to.

Bill ordered to be reported.

The Chairman: I thank the members of the committee and the parliamentary assistant for their co-operation through the hearings and discussion of this bill. We will take a couple of minutes and then begin with Bill 211. Before we do—

#### ORGANIZATION

Mr R. F. Johnston: I recommend that we approve our budget.

The Chairman: Mr Johnston would like us to consider our budget in between rather than after. I am agreeable to that, provided we do not get into lengthy discussions.

Mr R. F. Johnston: It is an excellent budget. I would move that we approve the budget as presented. There is only name here: Starr Enterprises. I have no idea what it is.

The Chairman: It has been moved that the budget be approved.

Mr Daigeler: Just for my information, why is it that all of a sudden the budget comes now?

The Chairman: Why?

Mr Daigeler: At this particular time.

Mr Carrothers: We want money.

The Chairman: I could put it to another meeting, but—

Mr Daigeler: I am not concerned about the meeting, but normally the budgets are approved at the time when the committee gets established.

Mr Carrothers: We were fairly early in the fiscal year.

The Chairman: If you recall, this was referred to our subcommittee and there was some direction being given over two or three subcommittee meetings to the clerk and the clerk finally put something together. We got the approval of the subcommittee a couple of weeks ago and this was the earliest opportunity.

Mr Daigeler: I think what Mr Carrothers is saying is that this refers to the new fiscal year.

The Chairman: Sorry, I misunderstood the nature of your question. I will have to, on your behalf, take this to the Board of Internal Economy.

Mr R. F. Johnston: When we carry it.

The Chairman: All those in favour? Opposed?

Motion agreed to.

#### RENTAL HOUSING PROTECTION ACT, 1989

Consideration of Bill 211, An Act to revise the Rental Housing Protection Act, 1986.

The Chairman: At this time we would like to welcome Brad Nixon, parliamentary assistant to the Minister of Housing. we have with us Mr Breagh, who is the opposition critic, and Mr Harris.

Mr Jackson: Mr Harris is responding to one of the bills in the House. He cannot be in two places at once, but as former Housing critic for my party, I will be more than pleased to receive the third government briefing now on this bill.

Mr Breagh: Before you start, I am caught in the same problem. For reasons which escape me, they seem to be calling bills upstairs while they know they have members engaged in committee work downstairs. If you see either one of us coming or going, that is probably why.

Mr Beer: Mr Chairman, if I could make that a threesome.

Mr Breagh: Just to prove incompetence on all sides. All right.

Mr Jackson: Both Mrs Cunningham and myself are responding to the lot levy proposal because of its effect on schools, and I will be doing the land transfer tax bill as well.

The Chairman: I appreciate your willingness to co-operate, because sometimes this committee deals with things that cross two or three critics' areas and it is difficult to do the scheduling. As you know, in terms of the bill we are under the gun to try and get it dealt with over two or three days. Today we are hearing simply the presentation from the Ministry of Housing. You have had private presentations, but it is an opportunity to get your concerns on the record and we will begin our hearings on Monday.

Mr Nixon: would you like to have any staff up at the table with you while we go through this?

Mr J. B. Nixon: Yes, I would.

The Chairman: Please call them up and introduce them to the committee.

Mr J. B. Nixon: Today I have with me Patrick Laverty, who is the director of the rent review policy branch; Susan Taylor, who is the co-ordinator of the Rental Housing Protection Act program; and Christina Sokulsky, who is the acting senior solicitor at the Ministry of Housing.

I would like to reiterate your comments, Mr Chairman, that we indeed very much appreciate the co-operation of the committee members and the efforts of the members to ensure that we do have a hearing today; that "thank you" will be underscored when I get to some of the details of the act.

I just want to point out to you briefly that this Bill 211, An Act to revise the Rental Housing Protection Act, replaces an earlier bill which was known as Bill 11, the Rental Housing Protection Act, passed in 1986.

When it was passed in 1986, it was due to sunset on 30 June 1988. Prior to its sunset, the Minister of Housing introduced a discussion paper for public discussion, asking for opinions, advice and counsel on how the Rental Housing Protection Act be dealt with in the future. There were extensive public and subsequent private consultations with representatives of tenants, landlords and other interested people.

What you have before you today is the act as drafted, resulting from those very extensive consultations. When the minister distributed the discussion paper, she also introduced an act extending the Rental Housing Protection Act for one year, so that it is right now due to sunset on June 30, 1989.

The act which is before you has attached to it some urgency. We would like to get it passed before 30 June 1989, because it replaces and changes the existing legislation in some significant ways, which Mr Laverty will outline to you.

1650

From the ministry's point of view, it is very important that we do have this replacement legislation in place by 30 June, and that requires us to move very quickly once we move out of the committee in terms of getting it printed and back before the House. We would very much appreciate any indulgences you, as a committee, are prepared to grant us.

Mr Laverty's presentation will cover off two areas: one, a basic review of the act; two, a review of the substance of the government amendments, which we would like to put before the committee during clause-by-clause review.

As I understand it, these amendments are not substantial in nature, more in the order of housekeeping. Of course, during the committee hearings you may end up disagreeing with me on that, but basically they are minor amendments, if none the less necessary.

Given the limited time we have available, I am going to turn it over to Mr Laverty, and he can conduct his two-part presentation.

Mr Jackson: If I understood the parliamentary assistant correctly, did he say he has some amendments available now? If so, could we have them?

Mr J. B. Nixon: I was going to wait until Patrick got to the second part of his presentation, and then he was going to distribute them.

Mr Jackson: But we are going to get them today.

Mr J. B. Nixon: Yes.

Mr Jackson: That was all I wanted to establish. Thank you.

Mr J. B. Nixon: They have not been drafted. You are going to get a substantive description of what they are about. They are being drafted, and we hope to get them to you by Friday, which will be two days before the clause-by-clause review. We are working under a very tight schedule.

Mr Jackson: The whole purpose of this was to get public input.

The Chairman: Can I report on that? The subcommittee met and scheduled the bill as follows. Today, we have presentation by the ministry, questions and comments to the ministry. On Monday, we have a full day of hearings from groups that the three parties submitted, so that it is by invitation. On Tuesday, we have the spillover of that: we have three 20-minute presentations. It was understood that we would attempt to conclude the amendments and clause-by-clause in the balance of Tuesday so that the bill could be reported to the House on Wednesday.

I was trying to move it through faster, but unfortunately Mr Harris indicated that he was not available this Thursday. We normally have committee time on Thursday, but we did not plan to use it, as he indicated that he was not available.

Mr Jackson: We could not use Thursday of the previous week because Mr Beer, the Liberal member, could not be at that meeting. It all sort of evens out, does it not?

The Chairman: It evens out, so we are attempting to make the best use we can, in the most expeditious manner possible, of Monday and Tuesday to hear the groups, to have our discussion and to report to the House by Wednesday. Obviously, that requires co-operation on everyone's part.

Mr Breaugh: Can I get this straight? We have been waiting for three years to see this bill, which is now coming out to committee, the government has further amendments which it has not even drafted yet, and you are telling us you have a deadline of the end of the month?



Mr J. B. Nixon: That is not quite what I am telling you.

Mr Breough: Tell it to me again then.

Mr J. B. Nixon: Okay. What I am telling you is that they are being drafted. What we have today is a—

Mr Breough: Well, I said they are not even drafted yet and you are saying they are being drafted. You are off on a good foot here.

Mr J. B. Nixon: What we have for you is a written description of each amendment, giving a substantive outline of what it is intended to do. We want to give that to you today and answer questions you might have about each of those amendments.

Mr Breough: That will be real nifty.

Mr J. B. Nixon: Good. That is the second part.

Mr Breough: Any time period today we could get it? Now? Later today?

Mr J. B. Nixon: Would you like it now, or when Mr Laverty gets to it?

Mr Breough: I think it would be nice to have it now.

Mr J. B. Nixon: Well, you can have it now then.

Mr Breough: I do not mean to dampen the dramatic effect of it all, but if you could table the documents, maybe we could start the circulation process.

Mr J. B. Nixon: Given that is the case, perhaps we should also table the written outline of Mr Laverty's phase 1 presentation.

Mr Breough: We are here to help, but you need so much help.

Mr J. B. Nixon: I know. I appreciate the efforts you are making. They are helpful.

The Chairman: Okay. What are we distributing?

Mr J. B. Nixon: We are distributing two different pieces of information. The first piece is the written outline of the oral presentation which Mr Laverty will make, outlining the basic elements of the proposed legislation. The second document is a written outline of the government amendments that we would like to propose at clause-by-clause review.

Mr Breough: Are you going to guarantee that these amendments will be drafted before 30 June, so that we do not have to vote on them first and you write out the words later?

Mr J. B. Nixon: No, no. We do not want to do that.

Mr Breough: Seriously though, I have a little bit of a problem here. It would really assist us if, as soon as you have prepared the wording that you want to use, you would forward this to our offices, even if it means a little work over the weekend. Not that we are suspicious, but—

Mr J. B. Nixon: We want to get it to you before the weekend.

Mr Breough: Fine. We would just like to see the words you intend to use.

The Chairman: I think Mr Breough makes a good point. The sooner committee members can get the final wording of the proposed amendments, the smoother things will go.

Mr J. B. Nixon: Let me just point out that one of the benefits of the delay in getting this matter before committee was that we were able to continue our consultations with tenants, landlords and others and further refine the legislation, which is why some of these amendments are coming to you. It has made for a bigger and better product.

#### MINISTRY OF HOUSING

Mr Lavery: The purposes of our presentation are threefold: to outline the major features of the legislation with an emphasis on the changes from the previous act, which has been in place since 1986; to provide information on the changes the government intends to make in the regulations on the municipal approval criteria, and to indicate the general nature of the amendments the government proposes to make in clause-by-clause.

The Rental Housing Protection Act was introduced in 1986 to provide a regulatory framework which requires municipal approval for a range of activities that can reduce the supply of rental housing: demolition; conversions to condominium, co-operatives, apartment hotels and certain other uses; certain renovations and repairs, and severance.

The 1989 act will continue this range of application with two minor changes: First, conversions to rooming houses were covered in the 1986 act. At that time, the security-of-tenure protection of the Landlord and Tenant Act did not apply to rooms. Coverage under the Rental Housing Protection Act then could prevent a landlord from converting first to a rooming house, then evicting all the tenants and converting to another use.

In 1987, the Landlord and Tenant Act was extended to rooming houses, so that the purpose of coverage no longer exists. In addition, the government does not wish to discourage the new supply of rooming houses, which are an important form of affordable housing.

The second change from the 1986 act is in the area of renovations. In the 1986 act, renovations and repairs were subject to the act if a tenant was in the unit and vacant possession was required or if the unit had been vacant for less than one year.

The vacant unit provision had been inserted to prevent a landlord from inducing a vacancy in order to do extensive renovations. However, the provision also caught up all normal repairs required between tenants.

The 1989 act corrects the scope of the act to cover only those renovations and repairs so extensive that they would require vacant possession, and this test applies whether the unit is occupied or vacant.

1700

The act does not apply to all rental properties:

The entire act will apply to only those local municipalities designated in the regulations. This will include all cities of 50,000 people and more. Smaller cities will also be considered on the basis of a resolution of the municipal council and on consideration of a report on local housing market conditions. The 1986 act applied to municipalities of 25,000 or more.

The legislative provisions relating to conversions to condominiums and co-operatives will apply in all municipalities, regardless of size. The 1986 act did not apply to co-operative coverage in all municipalities, although it did for condominiums.

The entire act will apply only to buildings or related groups of buildings of five units and more. This is the same as the 1986 act.

The legislative provisions relating to conversions to condominiums will apply to buildings, regardless of size. That is the same as the 1986 act.

The 1989 act amends the 1986 act to extend protection to vacant buildings retroactive to 31 January 1989 and the 1989 act will continue that on into the future. The 1986 act did not cover vacant buildings.

The 1989 act does not cover registered condominiums in the definition of rental properties. That is the same as in the 1986 act.

The 1989 act provides for exemption by regulation for individual or classes of buildings. The 1986 act provided for a number of buildings specific exemptions to deal with special cases and a number of classes of exemptions, such as demolitions and work orders by a municipality, social housing and renovations and repairs under certain government rehabilitation programs.

For the most part, the process under the new act will be the same as under the previous act: The owner applies to the clerk of a municipality; notice is provided to tenants; the application is circulated for comment; inspections may be required; a public meeting is held; council approves or rejects the application and gives notice to the applicant and other interested parties; within 20 days, the decision of council can be appealed to the Ontario Municipal Board by any person who is not satisfied with the municipal decision, and a hearing is held by the OMB and a decision rendered and communicated. If the application is approved, a certificate is given, after which the approved activity can be commenced.

The major change in the 1989 act is that the decision of the Ontario Municipal Board will be final. Under the 1986 act there was a possibility of a petition to cabinet of the OMB decision. This petition has been dropped to bring the Rental Housing Protection Act procedure more in line with other planning decisions and in recognition of the length of time required by the existing process.

On the subject of repeal, unlike the 1986 act, the 1989 act does not have a repeal date.

In the area of evictions, under the 1986 act it was illegal to serve a notice of termination on the grounds set out in section 107 of the Landlord and Tenant Act unless approval under the Rental Housing Protection Act had been obtained. Section 107 of the Landlord and Tenant Act covers terminations for demolition, conversion of use, or repairs or renovations that require vacant possession. This feature of the 1986 act is continued in the 1989 Rental Housing Protection Act.



In addition, however, the 1989 act will also impose new requirements on terminations under section 105 of the Landlord and Tenant Act, which deals with terminations for the use of the unit by the landlord or certain related persons. This power has sometimes been abused by landlords either to get rid of unwanted tenants or as a means of emptying rental buildings. Under the 1989 act it will now be illegal to issue such a notice of termination unless either Rental Housing Protection Act approval has been obtained or such a termination has not been obtained within the last three years.

Regarding return to rental use, one of the problems with the current legislation is that the courts do not have the power to return units back to rental use after they have been converted. There is a danger, then, that the penalties imposed by the act do not serve to preserve rental housing stock.

Under the new act, the court will be given the power to issue a restraining order to prevent conversion, will be able to order a return of the property to rental use and will be able to put the tenant back in possession.

In the area of co-operatives—and here we are speaking of co-operatives other than nonprofit co-operatives, which are not included under the legislation—in the 1986 act it was illegal to lease or agree to sell or lease a share or interest in a co-operative without Rental Housing Protection Act approval where such an approval was required. Any such agreement was void and a purchaser could recover any amount paid. However, where the agreement included a statement by the vendor that it did not contravene the act, such a statement would be deemed sufficient proof that it did not contravene this provision.

In the 1989 act, such transactions are illegal unless the co-operative was not formerly a rental property or the conversion did not contravene the act or its predecessor. However, if an illegal transaction occurs, it is now voidable at the purchaser's option, which allows for the event that continuing to own the share or interest may be preferred. When the purchaser decides to void, the amount paid is recoverable from the purchaser. The provision for a statement deeming the deal legal has been dropped.

The Landlord and Tenant Act still prevents termination of a tenancy for owner's own use in such a co-operative of more than six units. The 1989 act provided that where a unit is vacant, owner occupation does not require approval for conversion to occupancy by the owner or immediate family.

Several offences are contained in the new act: demolition, conversion, renovation or repair without approval; selling of co-operative interests; and giving notice of termination to tenants for demolitions, conversions and renovations or repairs unless any Rental Housing Protection Act approval is obtained. Those are carried over from the old act.

In addition, it will be an offence to give notice of termination for owner's and immediate family's use unless any required Rental Housing Protection Act approval is obtained, and it will be an offence to hinder, obstruct or interfere with an inspector exercising rights of entry for inspection related to ensuring compliance with the act. All the above offences have fines of up to \$50,000 or imprisonment of up to one year or both.

A new offence is being created to cover harassment by the landlord. It will be an offence to interfere with the reasonable enjoyment of a rental unit by a tenant with the intent of discouraging participation in the application or appeal process. It will also be an offence to so interfere with a tenant with the intent of facilitating obtaining the approval of a municipality.



Conviction on such offences will carry a minimum fine of \$1,000, a maximum of \$50,000 or a year in jail or both. Tenants may also be awarded up to \$2,000 as a penalty and, in addition, may pursue any civil remedy existing by law. Where any such conviction is obtained, no approval under the act for demolition, conversion, renovation, repair or severance may be obtained for a three-year period.

The limitation period for all offences under the act has been extended from six months to two years. Experience with the existing act has shown that six months was not adequate to identify many offences and to gather sufficient evidence to lay charges.

I will now turn to the regulatory provisions concerning the criteria to be used by municipalities in deciding on Rental Housing Protection Act applications. Under the 1986 act approval can be given only when at least one of three criteria is met: (1) the property is unsafe and unfit for human habitation; (2) the applicant agrees to replace units with the same number of units in a similar rent range and area and provide rental accommodation to existing tenants in the same area and of similar quality and rent; and (3) the proposal does not adversely affect the supply of affordable rental housing in the municipality.

#### 1710

The government intends to modify two of these criteria. The wording of the first criterion has created some difficulty to municipal property standards officers and building officials. They would prefer that the phrase "unsafe and unfit for human habitation" be replaced with the wording "structurally unsound," which is a term used in the Building Code Act and one these officials are experienced with and most comfortable in using. This change would also reduce any incentive on the landlord's part to allow a building to run down in order to qualify for approval of a demolition or renovation.

The third criterion will also be changed to drop the word "affordable" so that the proposals will be evaluated on the basis of whether they adversely affect the supply of rental housing in the municipality. In effect, this will extend the protection of the act to all rental stock, including more expensive rental units. This change was requested by the city of Toronto and the Social Planning Council of Metropolitan Toronto.

We are aware of concerns that have been expressed by some tenant advocates that dropping the word "affordable" will mean that municipalities will have no basis on which to reject luxury renovations that do not reduce the number of rental units.

In our view, there is some flexibility in the interpretation of "adversely affect." In considering local housing market conditions and local priorities, a municipality may choose to emphasize the impact on the total number of units or to give greater weight to affordability questions or to the long-term preservation of housing stock. The relative importance of these factors will differ from place to place, from time to time, and even from case to case. Accordingly, we regard the interpretation of "adversely affect" as one that is best left to the municipalities to define in the context of their own housing market.

I would now like to table a paper, which has already been tabled, having to do with the legislative amendments the government intends to make during

clause-by-clause. As the parliamentary assistant indicated, the actual wording should be available later on this week. We would be pleased to review those amendments with you if you wish.

Mr J. B. Nixon: Mr Chairman, I do not know whether you want to stop here and encourage questions on the initial part of the presentation or continue and get the amendments done and then open it up to discussion.

Mr Breaugh: No, these guys are on a roll. Why do they not go on?

The Chairman: You will take us through the amendments and—

Interjections.

The Chairman: What I want to ensure, Mr Laverty, is that you leave enough time for questions. We have until six o'clock. We have 50 minutes left.

Mr Laverty: Indeed I will be moving along as quickly as I can.

Mr Breaugh: You have only got 22 pages to go through. Surely that cannot take three years or two.

Mr Laverty: Indeed it will not.

Mr Breaugh: That is why these guys are paid the big bucks.

Mr Jackson: It took two months to do Bill 94.

Mr Breaugh: We do not want to break the rhythm.

Mr Laverty: We will be introducing amendments to section 1, which is the definitions section of the act.

Under the Rental Housing Protection Act, 1986, the definition of "co-operative" is intended to be broad in scope. In the Ministry of Housing's view, limited partnership co-operatives are covered by the definition, and conversions of rental properties to such co-operatives require municipal approval.

However, the fact that some such co-operatives have been created without municipal approval indicates there is some difference of opinion on this matter which is as yet untested in the courts. While the definition of "co-operative" in Bill 211 also covers limited partnerships and clarifies the earlier definition, it still does not specifically mention the limited partnership co-operatives. Bill 211 will be amended to further clarify that limited partnership co-operatives, trustee co-operatives and other arrangements are included under the coverage of the act.

In section 2, the regulations that list the municipalities where the act applies cannot be in effect on the day the act is passed. Given the present wording of the subsection, there could be a period before the regulations are passed when the act would not apply anywhere in the province. Therefore, this subsection will be amended so the act will apply to all municipalities except where exempted by regulation, and that will avoid a gap of a couple of weeks during which housing stock could disappear on us.

Clause 4(1)(b): The current wording of clause 4(1)(b) suggests that the uses listed—"condominium, co-operative, hotel, motel, tourist home, inn or

apartment hotel"—are not uses for the purpose of rental property. However, the definition of "co-operative" in section 1 indicates that a co-operative is a rental property and some of the other listed uses can also be considered uses as rental property. Therefore, the section will be amended to recognize that while these uses may be rental property, conversion to such uses is prohibited without municipal approval. It is a consistency problem that we are trying to sort out in our drafting.

Mr Breaugh: The Liberals are trying to be consistent. Give me a break.

Mr J. B. Nixon: Mr Laverty cannot comment on that, but I assure you we are always in search of perfection and consistency.

Mr Breaugh: That is what Patti tells me.

Mr J. B. Nixon: Who?

Mr Breaugh: Patti. You know Patti.

Mr J. B. Nixon: Who?

Mr Breaugh: Read the lips, Brad.

Mr Daigeler: She is in touch with you?

Mr Breaugh: I read about her every day.

The Chairman: Order.

Mr Laverty: Clause 4(2)(a): As currently worded, clause 4(2)(a) would not prevent a landlord from simultaneously issuing eviction notices to more than one tenant in a rental property or indeed to all of them at one particular point in time. Therefore, the subsection will be amended by adding a requirement for municipal approval where more than one eviction notice under section 105 is given within any 60-day period.

Subsection 4(2a), a new subsection being added: As they currently read, clauses 4(1)(a) and 4(1)(b) of Bill 211 would require municipal council approval for demolitions and conversions of the nonrental residential portions of a rental property. So if you have a rental property built over stores, you could not demolish space or make major renovations thereto the way it is drafted in the nonresidential portion.

Mr Jackson: I am glad we are protecting that in legislation. I would not want to see a couple of second-storey apartments hanging over some vacant land.

Mr Laverty: It is probably more relevant to extensive renovations where you may be trying to change the use of the property.

Mr Jackson: That is what I thought.

Mr J. B. Nixon: Aren't you glad you're hearing about this now?

Mr Laverty: A subsection will be added to section 4 to exempt from the requirement for municipal approval demolitions and conversions affecting parts of rental properties containing no rental units and which would not



require vacant possession of a rental unit elsewhere in the property.

Paragraph 1 of section 6: This paragraph refers to, "A building permit or demolition permit under section 5 of the Building Code Act." In terms of drafting style, we have decided to exactly reflect the wording of the Building Code Act. The section would be revised to refer to, "A permit to construct or demolish under section 5 of the Building Code Act," so that there is no doubt.

Paragraph 4 of section 6: This paragraph requires that where approval is required under the Rental Housing Protection Act, no zoning amendment can be approved before the RHPA approval is obtained. However, there are many circumstances where municipalities make general amendments to the provisions in their bylaws without a specific development proposal in mind. It would be unreasonable to require approval of the RHPA applications for all potential future development before a municipality could amend its zoning. Even where appropriate zoning is in place, other municipal approvals, for example, building permits, are usually required before a demolition, renovation, conversion or division of land can take place. Accordingly, we will be deleting paragraph 4 of section 6.

#### 1720

Subsection 7(2): This subsection provides that the prohibition of transfers of leases or agreements to lease interests in a co-operative does not apply where the lease is for a period of less than 21 years. The subsection will be amended to clarify that the exemption only applies where the term of the lease, including renewals and entitlements to renewals, is less than 21 years, thereby avoiding a 20-year lease that is renewable for another 20 years.

Subsection 7(4): This allows a "person" who acquired an interest in a co-operative to void the "conveyance, lease, agreement, arrangement or transaction" if it was entered into in contravention of the act and to recover "any amount paid thereunder." The terms "person" and "any amount paid thereunder" will be clarified in terms of legal drafting.

In subsection 11(5), we have an amendment for the sake of consistency. Subsection 11(5) permits authorized persons to enter and inspect rental units "during daylight hours." For consistency with subsections 14(2), (5), and (9), subsection 11(5) will be amended to allow entry and inspection "at reasonable times."

Subsection 11(10): The current wording of subsection 11(10) provides that a written notice of the decision of council shall be sent, in writing, within five days of the decision. The subsection will be amended to require the notice of the council decision to also include the reasons behind the council's decision and the deadline for appealing council's decision to the Ontario Municipal Board. This will provide important information to potential appellants.

Section 12 of the act allows municipalities to enter into agreements imposed as a condition of approval and for such agreement to be registered against the land to which they apply, to ensure that they can be enforced against present and future owners of the property.

The Ministry of Consumer and Commercial Relations has asked for a provision to be included in the act allowing the municipality to register a certificate, when such an agreement has been fulfilled or has expired,



indicating the status of the agreement. This would simplify the task of title searching and certification, eliminating the necessity to check the status of agreements with municipal staff.

Subsection 14(4): This subsection will be amended to provide that the inspection warrant that may be issued by a justice of the peace will be in the form prescribed by regulations, and there is a similar amendment to subsection 14(8).

Subsection 17(1): In order to coincide with the proposed amendment to clause 4(1)(b), subsection 17(1) will be amended to reflect the amended wording of clause 4(1)(b).

Mr J. B. Nixon: Just for reference, you might outline clause 4(1)(b) again. People might want to take a minute and refer back to clause 4(1)(b).

Mr Lavery: Yes. Clause 4(1)(b) states that, "No rental property, or part thereof, shall be, ...converted to any use for a purpose other than rental property, including, but not so as to restrict the generality of the foregoing, converted to use as a condominium, co-operative, hotel, motel, tourist home, inn or apartment hotel." We indicated we were going to be amending that clause earlier in the presentation and there is a consequential amendment to subsection 17(1) for consistency.

Paragraph 17(1)2: This paragraph allows for a court order to be made requiring the owner or tenant who has converted or attempted to convert a property to a prohibited use without municipal approval to return the unit to rental use. To coincide with the change to clause 4(1)(b) and subsection 17(1), the paragraph will be amended to require the return of the property of the use to which it was put just prior to the conversion or attempted conversion. It is another consequential amendment.

Section 18 will be amended to give the Lieutenant Governor in Council the authority to make regulations prescribing the forms for the inspection and search warrants I mentioned a few minutes ago in subsections 14(4) and (8).

Section 22: The act provides indemnity for ministry employees in pursuit of their duties under the act, but no such indemnity is given to municipal employees. We have had a few representations by municipal employees, and section 22 will be amended to provide indemnity for them related to their duties under the act. Like the crown, municipal corporations will not be relieved of liability.

Section 26 parallels subsection 12(1) of the Rental Housing Protection Act, 1986. Subsection 5(3) of the Rental Housing Protection Act, 1986 provides that an agreement or conveyance of an interest in a co-operative entered into without municipal approval is void. Subsection 12(1) relieved the Ministry of Consumer and Commercial Relations from the obligation to ensure that the Rental Housing Protection Act had been complied with when certifying the title to land.

However, subsection 7(4) in Bill 211 provides that the transfer of an interest in a co-operative without municipal approval is not automatically void, but rather is voidable by the purchaser. Since voiding of the transaction is optional and requires positive recorded action by the purchaser, relief of the Ministry of Consumer and Commercial Relations is not required. Accordingly, section 26 will be deleted at the request of that ministry.

Section 27: The Rental Housing Protection Act, 1989 will come into force on 30 June 1989. See amendment to section 28, which I will get to very shortly. Therefore, the Rental Housing Protection Act, 1986 should expire on 30 June 1989. Since section 2 of the Rental Housing Amendment Act, 1988, chapter 22, provides that the act does expire on that date, section 27 is unnecessary and will be deleted.

Section 27: Section 1 of the Rental Housing Amendment Act, 1988, chapter 22, provided for the sunset of the provisions of paragraph 47(1)14 of the Land Titles Act as amended by subsection 12(1) of the Rental Housing Protection Act, 1986. Subsection 47(1) of the Land Titles Act provides that the voiding of a transaction under section 7 of the Rental Housing Protection Act is a liability with respect to land but is not an encumbrance.

Controls are being continued over the sale of co-operative units. Therefore, the relief provided by the Ministry of Consumer and Commercial Relations by paragraph 47(1)14 of the Land Titles Act from the requirement to certify title relating to compliance with the Rental Housing Protection Act for units in co-operatives created during the life of the Rental Housing Protection Act, 1986 will continue to be required. Accordingly, the sunset of paragraph 47(1)14 of the Land Titles Act will be repealed.

Finally, section 28 provides that the act, except sections 24 and 25, will come into effect on a date to be proclaimed. To save the time required for proclamation, since it appears passage of this act will occur very close to the sunset date for the Rental Housing Protection Act, 1986, section 28 will be amended so that the act will come into force effective on 30 June 1989.

Mr J. B. Nixon: Mr Chairman, we are in your hands.

The Chairman: Okay. I saw Mr Jackson's hand first. We will hear some questions from him, and then Mr Breaugh. We have a little over 30 minutes, so try to divide up the time.

Mr Jackson: Thank you for your presentation. I guess I would like to get right into the regulatory changes, which are in my opinion substantive. You talk on page 7 about the wording change from, "unsafe and unfit for human habitation" to "structurally unsound." Perhaps legal counsel could expand upon what the real rationale is for the difficulties.

I have my own opinions. I would be anxious to know if there are some implications to a municipality determining what is safe and what is unfit for human habitation in that perhaps municipalities do not wish to take on that responsibility whether they are accepting or rejecting an application. Is that the real reason? My imagination is stretched to see how this amendment would reduce the incentive for a landlord to allow his building to run down.

1730

Mr Laverty: I think probably Susan Taylor is the best person to address that question in light of the experience of the act over the last three years; how that particular provision has been applied and how the new provision would apply.

Ms Taylor: I do not think the concern was that municipalities did not want to determine whether buildings were unsafe and unfit for human habitation. It was more that "structurally unsound" is a term that is used in the building code and they are much more familiar with that.

The other concern with "unsafe" and "unfit" was that it is fairly simple, say, for a landlord to cut off the water supply to a building or to remove the washroom facilities in the building and render it unfit for human habitation. The building could be perfectly usable other than that. Therefore, it was felt that "structurally unsound" was a somewhat more stringent test and less easy for a landlord to accomplish simply by taking minor action or failing to do routine maintenance.

Mr J. B. Nixon: I think Susan has really mentioned two issues, but to go back to the issue as you addressed it, the issue of determination by a municipal official about whether or not a building is structurally unsound is a decision which has significant legal consequences, not just for the owner but in this case for the occupants.

Putting aside the concerns about landlords who may want to avoid the jurisdiction of the act by running a place down, if a municipal official is going to be making a decision on the future of that building, I think it is important to have them making it in a context with which they are familiar, in which there are existing precedents and in which they can do their job properly.

Mr Jackson: I understand that. The purpose of my question really was to look at the concept of "tenants" and "safety" and "unfit for habitation" as they relate across the board in Ontario and not just specifically within the confines of this bill.

Mr Laverty and I have a long-standing relationship in work on a parallel bill—for want of the proper wording, the rental housing regulation act—wherein it references minimum property maintenance, a section of the bill that has never really been called, where we do not have in place across this province comprehensive maintenance standards.

So it strikes me that this amendment suggests that the criteria would be lowered to "structurally unsound," which is a point where tenants should not be in the building.

Interjection.

Mr Jackson: Just follow my thinking through here. I am trying to put this in some sort of perspective, so be patient with me.

So at that point the city might be called upon. There is an application and the city comes in and has a look at it, because that is the only reason to come in and have a look at it, assuming it is a municipality that does not have maintenance standards bylaws, so there is nobody to go in to check about the tenant complaints.

But they have a building department, where they approve building permits and inspect building work, and those people—these are separate and distinct from the maintenance standard people—are qualified to go in and say: "This is structurally unsound. Tenants shouldn't be here. Out you go."

I am trying to get in perspective what all that means, because you are hanging this on the fact that the incentive to allow a property to run down is somehow going to be overcome by this simple wording amendment. I am having difficulty making that linkage.

Mr J. B. Nixon: Both Patrick and I would like to make some comments.



It is important to remember that the Rental Housing Protection Act is not a bill designed to solve all problems in the housing market for all people. It addresses specific situations. There are other provisions under the Landlord and Tenant Act and under the Residential Rent Regulation Act which deal with similar issues or situations—

Mr Jackson: Even though they have not been called into force as yet, and even though we do not have a comprehensive program of maintenance standard bylaws for this province.

Mr J. B. Nixon: Let me just say that the Landlord and Tenant Act is in effect and is something which gives rights to tenants which they assert every day. Patrick can address the concern about the RRRRA.

Mr Laverty: The way the standards board is set up under the Residential Rent Regulation Act, in those areas that do have municipal standards, the municipal standards go on and the municipality sends work orders to us and then we review it. The standards board reviews it to see whether it is substantial. If it is, it sends it on to the ministry, which considers the question of whether a stay and ultimately a forfeit of rent should occur.

Mr Jackson: On the presumption that they have applied for something over and above the legal rent.

Mr Laverty: No. The stay or forfeit applies not only to rent review increases, that is, increases through our program, but also statutory increases, so any rent increase whatsoever is stayed and, if it is not fixed, ultimately forfeit, if you do not bring your building into compliance with the municipal standard.

In the parts of the province you mentioned that do not have standards, the standards board has a standard of its own which is now in force. A regulation was filed on 28 December 1988 and gazetted on 14 January 1989, which has a rental housing maintenance standard which is now in effect in all areas of Ontario not covered by a municipal maintenance and occupancy bylaw. People in those areas can contact the standards board and have an inspector from the board come out and look at the deficiency. That is now in place.

Mr Jackson: Not now, but at some point I would like to pursue some information on how that program is working.

Mr Laverty: Yes.

Mr J. B. Nixon: The other thing to remember, for real clarity, is that those areas most likely to be relying on the provincial standard promulgated by the standards board are more than likely, in general cases, to be those municipalities or regions which are smaller than 50,000; therefore, the municipal application process prescribed under the RHPA would not be in place but for condominium conversions. That is a generality.

Mr Jackson: I was going to say that, because my municipality does not have it and publicly—

Mr Laverty: Actually, Burlington has it for its downtown area, which was something it brought in to qualify for funding, probably under one of the Ministry of Municipal Affairs programs.



Mr Jackson: Most municipalities that got subsidy for renovation dollars under those programs had to bring them in, but it is for just the downtown core area, which has been their commercial districts.

Mr Laverty: That is correct.

Mr Jackson: But for residential components—I have a municipality of 125,000 people and for all intents and purposes, it does not have these kinds of bylaws.

Mr Laverty: My understanding is that the standards board is pursuing that question, or is going to be pursuing that question with the municipality of Burlington.

Mr Jackson: Not only that, the mayor has openly stated he will never have one, but that is another issue. He has been quoted in the paper saying he will never have one, but that is beside the point.

I will yield to Mr Breaugh, but I would have liked to pursue the concept of affordability and the need to have it dropped in this bill when it seems to be surfacing in every other bill the government has on housing.

The Chairman: We can come back to that next time.

Mr Breaugh: I will make two or three quick points. I do not share Mr Jackson's concern about the "structurally unsound" process. It is a term that is familiar to me and most municipal officials. Frankly, I am at the position now that it is better terminology than "unfit for habitation," simply because I have been amazed at the originality among landlords who want to get rid of tenants.

They know that in the wintertime shutting off the heat in the building makes it pretty much unfit; or in this Legislative Assembly, in the middle of a hot summer day, they turn the air-conditioning up to a level that you could spit on the floor and have the Ice Capades come in and that makes this room unfit for human habitation.

1740

But they have shut the water off. They have shut the heat off. The guy in North York who wanted to get his tenants out took an axe to all the windows in the building in the middle of a Canadian winter, and that pretty well makes it unfit. They have done all those stunts, and municipalities have had trouble trying to figure out how to react to people who are not exactly acting according to the norm. But "structurally unsound" means that if a guy wants to evict a tenant, he is going to have to do some serious damage to the floors and the wall, and he may be reluctant to do that to his investment. So I do not share those problems.

I did want to pursue a couple of things where I think there are going to be some problems. As you may know, I have previously raised the question. I am not happy with the notion that the bill applies in some places and not others. The original wording of "municipalities of 50,000 or more" led to the intriguing problem of which census you base that on. If they had a big influx of people over the summer and it went to 50,101, are they in? Are they out? Who the hell knows when that happens? How do you do that?

I am also intrigued by the problems you have created by going the other

way. If it is your intention to have all the municipalities participate in this process or not all of them, you had better make that as clear as you can.

It poses two problems. One is that if you write the act in its original form, so that, "We'll tell you later on by regulation who's in and who's out," it raises an intriguing problem: During the interim, while you are fiddling with your regulations, and it is taking you quite a while to fiddle up these regulations, are they in or are they out? What happens to people who are involved in particular incidents during the period of time when the government of Ontario is trying to figure out who is in and who is out? Does the law apply to every municipality in the province unless you, at some later date, say by regulation that it does not? What do people do during that time period when you are figuring out what the regulations should look like?

It seems to me that if you pass the law and it says at the time of passage that this applies to all municipalities in Ontario, it does. That may be naïve on my part, but it seems to me that if the law says everybody is in, everybody is in. If six months from now, you say, "Except all of these municipalities," it seems to me that they are all in for at least six months. It does pose some problems. Do they staff for it? How do they deal with the interesting legal cases which will arise during that period?

— I do not know that you need to respond to all of this now, but when you get to the actual way you drafted it, I would like to hear your legal advice on how you are going to proceed from here. It seems to me you really cannot write a law which says, "You're all in," and then six months later say, "Sorry, some of you aren't in."

Mr J. B. Nixon: I have just a couple of comments, and I think Patrick has one. One is that, as I have said at the outset, this is not an act which has been developed in isolation. There has been extensive consultation with landlords, tenants and municipalities.

Mr Breaugh: That is wonderful.

Mr J. B. Nixon: So there is communication to those who will be covered—

Mr Breaugh: That is also wonderful.

Mr J. B. Nixon: —so that they are prepared to do what may be required of them by law.

Mr Breaugh: Give me a break. There are 130 members here who do not know what the hell you are doing, precisely because at this moment you do not know. Do not try to kid me that the other 9 million people in this province know what you are doing, because you do not know yet. When you make up your mind, they will be able to figure out what they are going to do.

Mr J. B. Nixon: I am not saying 9 million. I am saying the municipalities will be charged with the responsibility of administering—

Mr Breaugh: You do not even know who they are yet.

Mr J. B. Nixon: I can list them for you.

Mr Breaugh: Then maybe you ought to do that.

Mr J. B. Nixon: As you know, the Municipal Directory of the Ministry of Municipal Affairs is revised every three years with municipal elections.

Mr Breaugh: Yes.

Mr J. B. Nixon: By virtue of doing that, you can, every three years, identify the list of those communities which have more than 50,000 residents. It is the intention that the regulations will proscribe municipalities greater than 50,000. They are a total of 34 municipalities: Brampton, Brantford, Burlington, Cambridge, East York, Etobicoke, Gloucester, Guelph, Hamilton, Kingston, Kitchener, London, Markham, Mississauga, Nepean, Niagara Falls, North Bay, North York, Oakville, Oshawa, Ottawa, Peterborough, Pickering, Richmond Hill, Sault Ste Marie, Scarborough, St Catharines, Sudbury, Thunder Bay, Toronto, Vaughan, Waterloo, Windsor and York.

The problem is that we do not want to be revising the act every three years to adjust the act to include a municipality which may have grown to over 50,000 by virtue of three years' growth.

Mr Breaugh: Let me get this straight. You are going to write the act, whenever you get around to finally drafting the act, so that it reads that all municipalities are involved. You already know that they will not all be involved. You have just read a list of those that will be. My assumption is then that the other 730-odd will not be.

Mr J. B. Nixon: The act provides for an exemption. Patrick may be able to comment.

Mr Laverty: Let me address the technical issues that were at work here.

Mr Breaugh: Yes, I think you should.

Mr Laverty: When we put together the initial act, we had thought we might in fact be completing the legislation some time more in advance of 30 June.

Mr Breaugh: Patrick, you have been eating those cookies again.

Mr Laverty: Under that scenario, what would have happened and how it was laid out in the act was that the act would have been passed and would have received royal assent, and then we would have had a period of time in which we would have drafted the regulations—

Mr Breaugh: Two or three days.

Mr Laverty: —and approved the regulations under the act. Then we would have proclaimed the act and the regulations on the same day. All that would have taken place before 30 June of this year.

As events turned out, it seems unlikely that we will be passing this legislation very far in advance of the end of the month.

Mr Breaugh: Ain't he magnificent, though?

Mr Laverty: As a result, we had to rethink how we were going to be staging the regulations on this act. It occurred to us that we would probably have to revert to the system that was used in the previous legislation, where



in the act it said, "This act does not apply to a rental residential property exempted by the regulations or located in a municipality that is exempted by the regulations." It then had a regulation which said, "All municipalities are exempt from this act except those listed in schedule 1," which is a rather roundabout way of accomplishing the question of which ones were included in the act. None the less, it works out.

What will happen is that we will have the new amendment before you next week, assuming the act passes next week. We would then be going to the standing committee on regulations and private bills at the very first opportunity, I think, provided it agrees, so that we could in fact designate those municipalities to shorten the period of time of uncertainty of people in the rest of the province.

From a technical point of view, for the first several days of the act, you would get your way, and all the municipalities in the province would indeed be covered. However, as soon as we brought that regulation in, it would only apply to those municipalities that the government has indicated it wishes to bring in, which are those municipalities of 50,000 and over.

As I indicated during my presentation, the government is also willing to consider any smaller municipality that comes forward and says it wants to be in the act. They will have a council resolution and they will put together a report on their local housing market. We would take that to the regulations committee and we would ask it whether the government of Ontario wishes to accede to the municipality's request. That is what is envisaged.

Mr Breaugh: I used to believe in that kind of stuff, but then I turned 13. I have been chasing a regulation that every ministry that is involved in it says is a good regulation. They are all in agreement with it. The only problem is, nobody can find the damn thing. It has been lost for 18 months, and no one can tell me where it is or when it will be proposed or when it will be approved.

The problem is that all of this is top secret stuff done by a top secret group of folks in the cabinet. Not all of the cabinet knows who does this. After they have done their dirty deeds, if and when they ever do them, they do eventually get around to publishing them, but the mechanics of getting a regulation put together and approved is a pretty difficult, top secret, espionage kind of thing. You can get the sauce from a McDonald's hamburger easier than you can figure out how a regulation is put together. So I think you are going to have some problems with this.

Mr J. B. Nixon: We are going to make our very best effort.

Mr Breaugh: That is my problem.

Mr J. B. Nixon: You will have to hang tough.

Mr Breaugh: Faith can only take you so far.

Let me just pursue one other area quickly. You have moved to define the latest words of "limited partnership," the latest scheme.

Mr J. B. Nixon: Let me point out something to you. I am not trying to interrupt, sorry. It is simply that we are including the words "limited partnership."



Mr Breaugh: I know that.

Mr J. B. Nixon: It is not like we are trying to define them; we are specifically identifying them.

1750

Mr Breaugh: Again, you were told of this problem in January, and I think before that, by various people who were very concerned about the use of this term. The ministry basically said: "We think that is included under the act and we do not have to do anything. Somebody is breaking the law by trying to do a little deal around the edges here." Six months and a few newspaper stories later, you finally said, "It is illegal and we will take some action." As I understand it, you have actually gone to court now.

Mr J. B. Nixon: That is right.

Mr Breaugh: It only took you six months to get there.

I think the one thing we have to admit is that as soon as we write this law, in whatever form it takes, there will be folks out there figuring out: "How can we get around this little piece of terminology? Can we invite a new group in to figure out what else we can call it? What other scheme can we put together that will allow us to break this law?" Six months from now, you will probably say, "We think that is illegal too." Then a year from now, you will take them to court.

Is it better to try to get the latest trend in dirty deals put together and include that in the act or is it better to leave a broader definition in place where, hopefully, you would not look at one another for six months and try to figure out whether the law is being broken; you would actually suck up enough courage that when you think, as a government, that somebody is breaking one of your laws, you would actually try to prosecute them?

- Mr J. B. Nixon: But for the comments on the nature of the government's decision, I think it is a good question, and it was much debated.

Mr Breaugh: We have established that the question was good. Let's go for an answer.

Mr J. B. Nixon: It was a very seriously considered question. It is our belief as a ministry—Christine, jump in at any time—that the definition of "co-operatives" includes all those varieties of legal arrangements which might be utilized to ultimately give an investor a right of occupancy or ownership in the residential unit, out of our concern that we try to deal with every variety possible.

At committee we are open to suggestions. I think we felt it was important to nail down specifically: "So, for greater certainty, let it be known that if you do engage in a limited partnership syndication or a trust partnership for purposes of acquiring ownership or occupancy, it is illegal too." I think there are some other words added to the amendment.

Basically, you have to do what you believe is right. We believe you have to spell it out clearly. You are right that there are always people out there who are going to try to take advantage of the law and try to get around it, but this is the considered wisdom of the ministry and the government.

Mr Breaugh: God, you have shattered me. The considered wisdom of the government?

Mr J. B. Nixon: Yes.

Mr Breaugh: Save us. I cannot continue. He has felled me.

The Chairman: Are you ready to adjourn?

Mr Breaugh: We could all go down to Ontario Place and help with the shredding.

Mr J. B. Nixon: The cameras went down and they could not find any shredders.

Mr Breaugh: No shredders. I wonder if they have heard of scissors.

The Chairman: We are getting off topic. Are there any other questions to the parliamentary assistant?

Mr Breaugh: Before we do conclude, seriously, when the drafting is done, I really would appreciate it. As I go through the proposed areas for amending here, there are really only two or three where there is going to be much of an argument at all. The rest look fairly straightforward.

This is a very technical bill. There will be a lot of legal arguments about it. So if you arrive next week with surprise 23 in terms of amendments, nobody is going to be very friendly towards that. It is in your own best interests to get the drafting done and to make that as available as you can, if the government is serious that you want to proceed with this this June. We would like to help you do that, but we really cannot help you if you do not tell us what you want to do.

Mr J. B. Nixon: We will do all within our power to give to you the amendments before the weekend so you have a chance to look at them. I realize that there are no representatives here from the third party right now, but if either party has amendments which it is going to propose, we would appreciate getting a chance to look at those.

Mr Breaugh: I do remind you that there is Canada Post, fax machines and all kinds of stuff now, so it does not always have—

Mr J. B. Nixon: Hand delivery works well.

Mr Breaugh: Yes, but you keep getting lost, Brad.

Mr J. B. Nixon: I will be here.

The Chairman: We have scheduled Monday's hearings and they are pretty tight. I think everyone has a copy.

Mr Breaugh: No, I do not.

The Chairman: Okay, we will get you one right away.

Mr Breaugh: See what I mean?

The Chairman: There are two groups being represented by the same

individual and we are trying to see whether those two can be combined in any way to buy us a little time, and whether we can move one of the groups from Tuesday up to Monday to give us more time for clause-by-clause on Tuesday. That is what the clerk is working on. At the same time, you will recall that these groups were by invitation and discussion among the three parties.

We received a letter from a Howard Adelman, 64 Wellshill Avenue, Toronto, who indicates that he has considerable experience in conversion to co-operatives and other shared ownership structures. He is not demanding to appear before the committee, but he is offering his services should we wish to hear from him.

Mr J. B. Nixon: I think it is best that we leave that in the committee's hands.

The Chairman: The clerk has indicated to him that we are very tight for time and that it has been by invitation only, so if it is all right with you, we will suggest that perhaps he put his views in writing and they can be circulated to the committee.

Mr Breaugh: There is only other little thing that I wanted to get on the record this afternoon. I am quite prepared to proceed with this; there is no big problem. But I do think we need to put on the record that this is a bit of an unusual set of circumstances here. Normally, when a legislative committee holds public hearings, they are public hearings. Members of the public who wish to attend may do so.

I think we should be clear that this is by invitation. We have all made a concentrated effort to put forward the names of people we are aware of who want to make representation on the bill. That leaves us all vulnerable to the notion after the fact, though, that if there is a group out there somewhere in Ontario which is adversely affected by this bill, it is going to call us and write to us afterwards and say, "We did not know you had any public hearings on this bill."

Without being partisan, it is a bit of an extrapolation of what has been going on with this process for the better part of three years now: Some folks know what is going on and a lot of folks do not have a clue about what is going on. It has been kind of a private process. We are broadcasting this around Ontario today, so anybody who has a beef can put it in writing and get it to the committee, but we are restricting somewhat the traditional public hearing process of the Legislature.

In this case it is a judgement call. At least we are not practising something in secret. The public has been informed that it was this government's intention to change this bill, so I do not feel badly about that, but I regret somewhat that people who perhaps by chance have not contacted one of us did not get a chance to be invited to make a presentation to this committee. That is a bit of a restriction that we normally do not do, but we are trying to get this bill through in time to save the government's bacon once again.

The Chairman: I appreciate your comments. I think all committee members are aware that—

Mr J. B. Nixon: Mr Chairman, I just want to say briefly that we appreciate the co-operation of the committee in dealing with this, in order that we can get the bill in place before 30 June. Indeed, it is to a certain

extent unfortunate that because of the timing reasons and all that has gone on, we cannot have the full and extensive public hearings that everyone may think are appropriate. You should know that the ministry provided to the clerk of the committee a list of a variety of interest groups that have dealt with us. We have tried to include as many as possible, but our wish too would have been for full public hearings but for the busy agenda of the Legislature.

The Chairman: The committee stands adjourned until Monday.

The committee adjourned at 1800.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
RENTAL HOUSING PROTECTION ACT, 1989  
MONDAY 26 JUNE 1989



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Nixon, J. Bradford (York Mills L) for Mr Beer

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Witnesses:

From the Association of Canadian Real Estate Syndicators:

Thresher, John, President

Nairne, Michael, Vice-President

From the Association of Municipalities of Ontario:

Ward, Keith, Co-Chairman, Social Development Committee; Director of Planning and Development, Peel Non-Profit Housing

Cappe, Marni, Municipal Development Committee; Regional Housing Co-ordinator, Regional Municipality of Ottawa-Carleton

From the Coalition for the Protection of Rental Housing:

Mahoney, Eleanor, Community Legal Worker

Shields, Meg

From the Federation of Ottawa-Carleton Tenants Associations:

McIntyre, Dan, Executive Director

From the Tenant Advocacy Group:

Abramowicz, Lenny

Wendell, Deborah

From the Federation of Metro Tenants' Associations:

Melling, Michael

Hale, Kenneth

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday 26 June 1989

The committee met at 1534 in room 151.

RENTAL HOUSING PROTECTION ACT  
(continued)

Consideration of Bill 211, An Act to revise the Rental Housing Protection Act, 1986.

The Chairman: The meeting will come to order. We are considering Bill 211, An Act to revise the Rental Housing Protection Act, 1986. We began our consideration of this bill last week with a presentation by the ministry and questions and discussions around that. Today we begin our hearings.

Just to let you know the format very quickly, the groups that are appearing before us today, most of them today and a few tomorrow, were by invitation after discussion among all three parties. Because of the limited time available—we would have perhaps preferred to have more time, but it is not ours to determine that entirely as a committee—we have approximately 20-minute time slots for each group. I will try to keep things as close to that timing as possible.

All groups will be permitted to split that time as they see fit between presentation and questions. Committee members usually like to have some time for questions. As well, written presentations will be reviewed and considered by the committee and given equal weight with oral presentations.

We will begin with our first group, the Association of Canadian Real Estate Syndicators. Representing that organization is John Thresher, president

Mr Breaugh: Before you get started, could I ask who is carrying the bill for the government?

The Chairman: Mr Nixon, the parliamentary assistant.

Mr Breaugh: Could I ask where he is?

The Chairman: He is here. I assume he left for—

Mr Breaugh: Is there some new spiritual approach to attendance at committees that I do not know about? Normally we do not begin to carry a bill until there is someone responsible for representing the government on the matter. Proceed.

ASSOCIATION OF CANADIAN REAL ESTATE SYNDICATORS

Mr Thresher: Just by way of introduction, my name is John Thresher. I am president of the Association of the Canadian Real Estate Syndicators. Mr Nairne is vice-president of our organization.

Thank you for giving us this opportunity today. I propose to read this short brief, and if it is acceptable to the members, to then deal with questions, as appropriate, as they are sent back.



First of all, I should just like to say that the Association of Canadian Real Estate Syndicators is an independent body. It is not allied with any group. It is a nonprofit association whose members are responsible each year for raising approximately \$1 billion of private investment capital for the real estate industry.

Thank you for hearing our brief today. The Association of Canadian Real Estate Syndicators represents all those who are involved in the business of raising money from individual investors to finance real estate projects.

Although real estate syndication has been an active force in the marketplace for many years, ACREs is a relatively new association. We believe that syndication is now the driving force behind the construction of apartments in Ontario. In 1988, approximately \$1 billion was raised towards the creation of apartments and condominiums in Ontario. We believe that our members developed approximately 40 to 50 per cent of those condominium apartments in 1988.

We are here before you today, first, to express our concern over this proposed legislation. Basically, we subscribe to the message of the Fair Rental Policy Organization of Ontario, which is opposed to this bill. However, today we also wish to make sure this committee fully understands the nature of our industry, its role in the provision of rental housing and, in turn, some of the implications of this legislation. I assure you we will be brief.

The introduction of rent controls changed the rental housing market, perhaps permanently, in Ontario. Starting in the mid-1970s, respected developers who were the source of the vast majority of new rental stock began to leave the industry. Notably, Cadillac Fairview, one of the most respected builders and managers in the business, sold all its units in the face of dwindling returns, increasing uncertainty and ultimately adverse shareholder reaction.

To an extent, as these traditional suppliers left the market, new supply was taken up and offered through the process of syndication, the business in which we are involved. Here, a developer builds and sells a condominium project to individual investors, who end up owning a condominium unit that is frequently leased out to the public.

Individual investors are now the backbone of the new rental housing supply in Ontario. Some are buying with the eventual perspective of retiring to these units. Others are buying in order to acquire a hedge against inflation and for long-term capital appreciation and income.

1540

It is these investors and their funding of new units that have kept our rental housing crisis from spilling over to catastrophe. According to the Metropolitan Toronto planning and development department, condominiums provided somewhere in the order of 13,000 new rental suites for the five-year period ending 1986. The October 1988 Canada Mortgage and Housing Corp Toronto rental market survey points out that private rental supply increased in 1988 and that most of these are rental syndication projects comprised of investor-owned condominiums.

In the last 24 hours, we have just had released to us the latest CMHC April 1989 figures. If I may just update this—it is not in my presentation—this in fact tell us that over 11,000 condominium units are

currently under construction and a further 10,000 to 15,000 units are in the advanced planning stage. That is approximately 26,000 units either actually produced or in the process of being produced.

CMHC thinks that about a third of these will flow into the rental housing stock, so approximately 8,000 or 9,000 units will actually come into rental stock as a result of that. That is an annual figure, by the way.

Some industry experts believe that as much as 40 to 50 per cent—obviously, CMHC is relatively conservative—of all these new condominiums are investor-owned and slated for rental usage. CMHC believes that vacancy rates, although continuing to be low, could ease slightly over the next 12 months. One reason for this will be the completion of more investor-owned condominiums.

It is important to point out at this stage that there is no increase in pure rental apartments. The only present rental stock that is being increased through private sources is in fact these condominium units.

It is in recognition of the importance of this continuing supply of new rental stock that the government has wisely excluded condominiums from the Rental Housing Protection Act. In addition to the thousands of new rental suites which are being created and the thousands of jobs which accompany this process, the government's position also recognizes some significant reasons to exclude condominiums from this bill.

First of all, the vast majority of these buildings are targeted at upper-income and middle-income renters. The average rents in these kinds of buildings are in the \$1,000 plus per month range. They are not therefore units where affordability is likely to be a problem.

As with newer buildings, there is also tremendous turnover. This phenomenon is part of the rental business. The result is that there is no shortage of these kinds of suites where vacancy rates are in the five per cent plus range. In short, with no shortage, there is no need to include such suites in the Rental Housing Protection Act.

Such inclusion would be a financial tragedy for the tens of thousands of investors who own them. Investors paid condominium prices for these buildings. Even rented, the typical suite loses \$400 to \$700 per month—that is the shortfall in rent below the economic rent that is required—and these deficiencies have to be funded by investors. It is only the opportunity for capital appreciation over the long run, with the potential sale to the home owner, that makes economic sense here.

Investors also have assumed condominium mortgages, often for 75 per cent or more of the value of these suites. With resale to owners forbidden, the impact of including these in the Rental Housing Protection Act would be a massive decline in the value of these suites. The banks and trust companies, by law, would not be able to renew the financing that is already in place at these levels and would be forced to foreclose. In our opinion, that would be an economic catastrophe for thousands of people.

Unfortunately, certain activist groups ignore both the importance of new private investment to our future rental supply and the economic circumstances of these existing investors. Some continue to propose that condominiums be included in the Rental Housing Protection Act. Their concern, and justly so, is with the tenant.

However, the solution to meeting the tenants' needs does not lie in including condominiums in legislation drafted for another purpose. A far better balance among the interests of society in seeing new rental stock built, the interests of existing investors and the interests of tenants can be brought about by a re-examination and perhaps, where necessary, amendments to the Landlord and Tenant Act to improve disclosure provisions to tenant-occupied condominiums. In short, the government is right in excluding condominiums from the Rental Housing Protection Act.

We have attached to the back of our presentation an economic summary of some of the consequences which may be of some interest to members of the committee.

In closing, we simply add that it is regrettable that there is even a need for this bill at all. Ontario, with a vibrant economy, is the heartland of economic growth for Canada. We believe your rental housing policies require a thorough and profound re-examination. We believe you could protect tenants, accommodate private investment and save public money for other pressing priorities by rethinking your approach, starting with the Byzantine system of rent review in Ontario.

The Chairman: Thank you very much and thank you for leaving time for questions from committee members, starting with Mr Breaugh.

Mr Breaugh: I have just one question for you. Much of what is in this bill is the conflict between somebody's right to invest in a building and do with it as he wants and someone else's right to live as a tenant in a building. A lot of what the bill does addresses that question. I am interested in the point you have made about excluding condominiums.

What is your solution, what would you say to a group of people who had rented a town house in Mississauga for three or four years and were told on a Friday night that the thing they thought was rental accommodation really is not, it is all condominiums and they have the weekend to think about whether they want to come up with \$150,000 or \$200,000 and can buy it like anybody else can in the condominium marketplace these days or they are out? How would you propose to solve that one?

Mr Thresher: The first thing I would say is that we believe absolutely that tenants, before signing a lease must, and do in fact—I believe now that does happen—know that accommodation is owned by a private individual. They must have prior notice of that particular fact.

This does not directly help that particular tenant, disadvantaged at that stage. Our concern is that if condominiums are included under the Rental Housing Protection Act, no more money at all will flow into this market and, in the longer haul, the supply will completely dry up. What seems like a short-term palliative now will create major long-term repercussions. Private investment capital is inherently mobile. It will just not go into the real estate market at all.

Mr Nairne: The second element of that is examining the Landlord and Tenant Act in respect of notice provisions. Rather than taking this bill, which was designed to deal with the issue of affordable rental stock, and redesigning it to include condominiums, thus forestalling future condominium development and future rental supply, look to the Landlord and Tenant Act, not only in terms of disclosure but also an examination of tenure rights.

Just like in a job: If you shut down a factory, somebody who has been

with you for 10 years gets perhaps 10, 12 or 24 months' severance pay. So you can begin to link tenure rights with habitation, so that with disclosure on top that solves the problem, but it does so without impacting the future supply of the industry.

Mr Breaugh: So your proposal, in short, then would be two things: some kind of right-to-know law or some disclosure provision that you are in fact renting a condominium and link that to some changes in the Landlord and Tenant Act?

Mr Thresher: Absolutely.

Mr Nairne: No different from efficient industry where capital is mobile and flows. Here you want to create an efficient housing sector but still protect the tenant like an employee, and you do that through notice provisions, those kinds of things.

Mr Harris: Mr Thresher, how many units does your industry have on the books to be built this year or next year? What is the average number of units being built a year by your industry?

1550

Mr Thresher: There is no statistic as such that I am aware of that would give you a national figure. Here we are dealing with Ontario's problem, but this association is raising capital right across Canada. What we do know is that apparently about 11,000 condo units are currently under construction, with 15,000 in the advanced planning stage, for a total of 26,000 in Ontario, as we understand. So we are dealing with a substantial number of units right now in Ontario.

Mr Nairne: We have taken a look and our best estimate is that we supply about 8,000 to 10,000 new rental suites in Ontario each year. Those are all condominiums. It works out to about \$1-billion worth of new capital based on asset value.

The second thing is if you take a look at CMHC statistics, you find that vacancies are rising in two centres in particular, Ottawa and London, which have been two markets where members of our industry have been most active in new condominium rental development. So you see the consequence in terms of competitive choice.

Mr Harris: If condominiums were included in this legislation, how many units would your industry be able to put into the Ontario market each year?

Mr Thresher: If condominium units were included, none at all. The capital would move. No more capital would flow into condominiums. It would not make any sense whatsoever for an investor to invest.

Mr Jackson: Residential condominiums?

Mr Thresher: Yes.

Mr Jackson: Residential to commercial, industrial park-type condominium development —

Mr Thresher: There is already a trend to commercial for the reason



that there is no rent control and it has been that way for some years. There is no rent control, obviously, with commercial buildings, so that trend is already under way.

Mr Nairne: The key is to understand the motivation of the individual investor. These are people like you and I. I am buying real estate instead of stocks or bonds or a guaranteed investment certificate. What is imperative is that I have liquidity, which is a right to sell my unit. That right is only based on home ownership value. Take that right away and not only do you impair my economic value, but why would I ever invest in something that I cannot get out of? It is like putting your money into a GIC and they say, "Yeah, we'll send you the interest, but you can never get the principal back."

Mr Harris: Do you have any statistics on how many of your investors who purchase either a unit in these buildings or a share equivalent to a unit actually move into their unit at any given point in time?

Mr Nairne: I can only give you estimates based on our company's experience at Equion. We typically find that about 10 to 15 per cent of investors are buying with the expectation that they will move in in the long term. So it is a sizeable proportion who are putting it into the rental pool and then looking on it as, "Geez, I'm going to buy today and fix my costs, put it in the rental pool for 10 or 15 years, and then when I want to, I've got my retirement housing."

Mr Harris: I just want to be clear. Do 10 to 15 per cent move in right up front?

Mr Nairne: No, down the road. In our industry, because the individual is buying for a long-term inflation hedge and capital appreciation, the number who move in in the first several years is virtually zero per cent. It is only in the long run that individuals actually look to moving in.

The Chairman: Thank you very much for coming before the committee and providing us with your perspective on this important issue.

Our next presentation is from the Association of Municipalities of Ontario. Is there someone here representing AMO? My agenda shows Bev Allen, and I do not see Bev. Would you introduce yourself to the committee? You have about 20 minutes for presentation and questions from committee members.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mr Ward: My name is Keith Ward. I work with the region of Peel and I am representing AMO. With me today are Marni Cappe from the region of Ottawa-Carleton, also representing AMO today, and Carolyn Ellis who is AMO staff. We thank the committee for the opportunity to speak today on this act.

AMO has a rather unique role among the associations that will be before you. First, we are primarily a political body. Marni and I are staff, which is in the minority position within the AMO structure. The AMO board and most of the committee structure are political officials. AMO represents about 700 municipalities throughout the province. We are not in the same category as the special interest groups which we would expect you to hear from. The majority of the members, as I say, are elected by the same citizens that elect you, ladies and gentlemen.

The kind of positions we come up with in AMO tend to be political compromises, so you are going to hear comments from us that fall somewhere

between the comments you will be hearing from the respective landlord and tenant interest groups.

We in AMO have had a hard time coming up with some consensus on this act, given the diversity of interests among our membership. Clearly, some municipalities are going to dissent from the AMO position, but we do represent the majority view within the association. Furthermore, the municipal councils and municipal staff have been charged with the day-to-day responsibility of enforcing this act. Again, therefore, we are in a unique role and hope our comments will be given due consideration.

AMO did respond to the Future Directions consultation paper that was issued last year. That response was developed through extensive consultation among our membership. We had looked at the implications of the act on our municipalities, and certainly we support the position of the government and of the Ministry of Housing that the existing rental stock must be protected. We are very concerned, however, that this act is sending out the wrong kind of message to the private sector.

We believe that investor confidence, because of a number of market and regulatory conditions, is fragile. Regardless of how well the act works, regardless of how clean it is, we believe the act is going to be perceived by the private sector as another nail in the coffin, so to speak, something else that is going to be a disincentive to their investment both in new property and in their existing rental properties. We believe the participation of private investment is vital to maintaining both new investment and the current rental stock.

In our earlier response, and in coming before you today, it is our position that the Rental Housing Protection Act is not the best means to accomplish the goals the act is addressing. The bill itself addressed some of our earlier concerns with respect to the current legislation, but there are other issues which have remained unanswered. We will be going through some of those. We are leaving you with our written presentation, and I will not waste any time going through the areas where we agree with the legislation. There are some of those, and I would certainly commend those to you.

I want to address the general direction AMO is going with this. As I indicated, in our response to Future Directions it was our recommendation that the act be repealed and that alternative measures be introduced. We do believe that the legislation already exists to deal with the kinds of concerns the act is trying to deal with. For instance, the Planning Act, the Landlord and Tenant Act, rent review legislation, all these could be amended more appropriately to deal with specific issues the act is addressing.

For instance, we could control condominium conversions by going back to the conversion policies which were in existence and administered by municipalities under the Planning Act, with amendments to landlord and tenant legislation to provide lifetime tenancy for elderly tenants.

We would like to see the provincial government making a strong, tangible commitment to private market participation in addressing the rental housing shortage. That means investment incentives and rehabilitation incentives for the private sector. We strongly believe, and this is the association's position with respect to a number of pieces of provincial legislation, not just this act, that the act should be made permissive, that individual municipalities should be able to adopt development controls as local councils deem necessary.

1600

The association is disappointed that none of its recommendations with respect to the introduction of alternative measures were heeded in the review of the act that is now in place. Given that municipalities have been designated the responsibility for enforcement of the act, we felt our recommendations were constructive and should be given further recognition in the final bill. There is a minor acknowledgement in the additional exemption available to the smallest municipalities; that is a step we acknowledge, but it does not go far enough.

There are a couple of issues AMO had not dealt with in the consultation process that I want to just highlight for you.

One is the exemptions for registered condominiums, which came up with the previous speakers. As I said, AMO did not have a position on continuing exemptions for registered condominiums. We are aware of pressure to pull condominiums under the act. We would emphatically oppose such a measure, because we feel that alters the rules everybody understands when they are entering into real estate investments. We feel that would definitely kill the market.

The second issue we would like to address is vacant buildings and the coverage of vacant buildings under the legislation. We had not taken a formal position on such coverage. In reviewing this matter, we really cannot see any reason why they would not be covered if the act is going to accomplish what it is supposed to. We acknowledge that there can be abuses that would occur through vacant possession and we are agreeable to having vacant buildings covered.

Marni Cappe is going to run through a couple of the major concerns we still have with the legislation.

Ms Cappe: I will be brief. As Mr Ward previously mentioned, one of the issues which we discussed at AMO, in our numerous consultations, was the issue of condominium conversions. There are three parts to the application of this act with regard to condominium conversions that we want to address.

First, prior to the imposition of the then temporary Rental Housing Protection Act, many municipalities had their own policies to govern the conversion of rental units to condominiums. We feel now that the Rental Housing Protection Act effectively overturns any locally developed policies and eliminates the municipality having any flexibility to address local market conditions.

Second, there is the issue of the delegation of the approval authority. Under the proposed and current Rental Housing Protection Act, each municipality is now responsible for receiving applications to convert units to condominiums. Until the Rental Housing Protection Act, those approvals in many cases were done either at the provincial level or, where there were regional governments, the regional municipalities had the authority to approve condominium conversions, as they do with the approval of new condominium applications.

The extra administrative burden that now falls on the member municipalities of AMO, the 700-plus municipalities in this province, has been quite cumbersome. It is the municipalities as well as the regional levels of government, where the original approval authority had rested, that are expressing the desire to return to the original approval mechanism.

The third aspect of this notion of condominium conversions being handled by the local municipalities is that it is also confusing for the applicant in a development approval system which is already burdensome and complicated, because of the numbers of levels of government that may be involved. We feel it would be simpler for an applicant to know that any applications dealing with condominiums would be handled by the same level of government.

In the case of the municipality with which I am most familiar, Ottawa-Carleton, it would be the regional municipality which had that authority to approve not only new condominiums but condominium conversions.

Another small point I would like to conclude with is more an issue of principle, with regard to the implementation of the RHPA. We are concerned with the potential conflict between the application of that act and the requirements of local bylaws, which may have the effect of putting municipalities into conflict with their own bylaws. For example, it might happen in the case of rental units which have been created illegally in contravention of zoning bylaws. We would request that this issue be rectified so that there is no such conflict.

Finally, I would like to conclude by expressing on behalf of the association our appreciation for having an opportunity to put forward our views.

The Chairman: Just one point of clarification. You mentioned the administrative burden that falls to your 700 members. This bill proposes that the new act, when it is passed, only applies to municipalities with a population of 50,000 or better. As I understand it, that is less than 50 municipalities. Was that just a slip in your statement or—

Ms. Cappe: I understood the application of condominium conversion was to be more widespread, and it was not necessarily confined to those larger municipalities.

The Chairman: Thank you for clarifying that. Questions?

Mr. Breaugh: It will be municipalities that will in many ways implement this law, in those few municipalities that will be covered by the law. Is there something you could tell us about the law that makes it difficult to implement as a municipality? Is it the nature of the beast?

To be a little more blunt about it, I am concerned somewhat that we design laws which God in his or her infinite wisdom could not carry out. It is a rather stupid thing to put on the books legislation that nobody else can enforce. Part of the problem we have had in the continuing battle between landlords and tenants all over Ontario is that the law is on the books—that is not the problem—but there is nobody around to implement the law.

Nobody wants to take the responsibility for enforcing the act. Everybody has a different agenda. Municipalities quite regularly tell me: "Yes, there is a provincial law and yes, we are supposed to carry it out, but we have our own laws and they get priority. If we think about it later on, we might do something about that provincial law." So we wind up with a whole lot of laws on the books and nobody to implement them.

Mr. Ward: There are certainly major issues with respect to staff resources for inspection and enforcements and the paper flow that will be entailed under this act. I can only speak briefly to the experience we have



had with the current legislation. There has been a lot of confusion there in that we have not known how to interpret the act in the very basic sense, such as whether a particular activity has in fact been covered by the legislation. There has been a lot of confusion in that regard.

A number of activities which have been subject to the act have been so small in nature, in terms of the costs involved, that the processing has been more expensive than the actual work. Municipal building officials, quite frankly, in many cases have been turning a blind eye to some of the legislation, counselling applicants not to apply, not to go through the building permit process and just proceed with the work. There has been that kind of aversion to inflicting the work upon ourselves.

Mr Breaugh: One other thing that concerns me a little: We have just had a presentation from those who are advocates of housing as an investment tool. They were very clear that this is all very mobile and the world will stop tomorrow if this bill is passed. They also said that this is very fluid, that it could stop and start quickly, and it struck me as I went through your presentation today that virtually none of you, as municipalities around Ontario, will be covered by this bill. You need a population of 50,000 or more and the parliamentary assistant has a top secret list of who is going to be included in this. It struck me that if this investment capital is so fluid they ought to be able to make their way from Scarborough to Ajax all right, without a hell of a lot of trouble, and why would they not? If one municipality, like Scarborough, is covered under the bill because of its population size and another one 10 miles away is not covered by the bill, why would they not take their business there?

Are you anticipating that municipalities adjacent to a municipality with more than 50,000 people will all of a sudden get an influx of great gobs of cash and condominiums coming in?

Mr Ward: Certainly we would expect capital to move around. If there are neighbouring municipalities where the markets would support that kind of investment activity, that clearly would happen. It is also the case, regardless of the fact that we have a minority of municipalities covered in the legislation, that the vast majority of the actual rental stock within the province will be covered by this legislation.

1610

Mr Breaugh: Okay.

Ms Poole: When you were introducing your brief, you stated that although the opinions expressed in this brief were not shared by all municipalities in AMO, certainly they were by the majority. I was quite surprised to hear that, because I know some—for instance, the city of Toronto—have taken very strong stands on the Rental Housing Protection Act. I wondered if you had any sort of breakdown to show which municipalities in your organization agreed with the opinions stated here and which of those dissented

Mr Ward: I do not think we have a recorded vote in that sense.

Ms Poole: Do you have any idea of what the population difference would be, as to those who are in favour of your statements?

Mr Ward: My sense is that the strongest opposition comes from the city of Toronto and the city of Ottawa, which have the highest proportion and

the largest volume of older rental stock. Certainly, the very large municipalities otherwise—My own region, the city of Mississauga with a population of 400,000, supports the AMO position. Population in itself does not seem to be the issue. It is more a matter of the proportion of rental stock they have, and the proportion of that which is relatively older and perhaps under more pressure.

The Chairman: Any other questions? All committee members recognize the importance of the municipal level and your members will be heavily involved in implementing this, so thank you for coming and giving us your perspective.

I think all members of the committee have received a revised agenda for this afternoon, which indicates our 4:10 pm delegation has cancelled. I am just going to check whether representatives from the Coalition for the Protection of Rental Housing are present and whether they would be prepared to proceed a little early.

Are Mr Abramowicz or Esther Ishimura present?

Interjection.

The Chairman: It is the same gentleman who is down for 5:10 pm; he is down for two groups. You are representing the—

#### COALITION FOR THE PROTECTION OF RENTAL HOUSING

Ms Shields: The Coalition for the Protection of Rental Housing.

The Chairman: Thank you for making yourself known to us.

Ms Mahoney: I think there was some confusion. The names given to your committee were incorrect.

The Chairman: Would you introduce yourselves to us, then?

Ms Shields: I am Meg Shields.

Ms Mahoney: Meg is from Foodshare, which is a Toronto organization trying to eradicate hunger in Toronto. My name is Eleanor Mahoney, and I am from Parkdale Community Legal Services. We are both members of the coalition.

Ms Shields: The Coalition for the Protection of Rental Housing is a broad-based group of social service agencies, community legal clinics, tenants from numerous groups, churches and others concerned with the loss of affordable rental housing in Ontario.

Since it was established in 1988, the coalition has lobbied hard to secure passage of strong, effective and permanent laws to protect rental housing from conversion, demolition and luxury renovation.

Throughout the past year the coalition has supported tenants trying to protect their homes and urged the government to act quickly to plug the many loopholes of the current Rental Housing Protection Act. We are here today to bring our message to the Legislature via your committee, and to comment directly on the government's legislative response to the alarming erosion of the province's private rental housing stock.

Bill 211, introduced by the Minister of Housing (Ms Hosek) this past January, is a step in the right direction, towards more effective protection of Ontario's rental housing stock. The coalition is pleased to note the minister's sincere appreciation of the extent of Ontario's housing crisis and of the necessity of protecting our existing housing stock from further loss. We applaud the minister on the improvements found in the proposed legislation underlined below.

First, the rental buildings which become vacant will still be covered by the new Rental Housing Protection Act. The vacancy loophole in the current act enables landlords to avoid restrictions on conversion, demolition and luxury renovation by emptying their buildings, which then become exempt from the Rental Housing Protection Act. Gaining vacant possession of their buildings was accomplished through fair means or foul—bribes to tenants, tenant attrition, harassment, non bona fide eviction notices and the cutoff of vital services. The result was the loss of a substantial amount of affordable rental housing and the dislocation of harassed tenants from their homes.

The new Rental Housing Protection Act closes the vacancy loophole by ensuring that rental buildings covered by the act remain covered even when fully vacant.

Second, the six-month limitation period on prosecution has been extended to two years. The ministry has recognized that it often takes longer than six months to investigate complaints, identify violations of the act and lay charges. By extending the limitation period on prosecution by two years, the ministry is sending a strong message to speculators, developers and landlords that the act will be enforced and violators liable to prosecution.

Third, illegally converted rental property can be ordered reconverted by the courts, and application for such an order can be made by any tenant, municipal corporation or the minister.

This is an extremely important provision. Previously, speculators considered the penalty provisions more of a licence fee than a deterrent. The profit potential of a conversion made the typical fine of \$2,000 to \$5,000 quite acceptable as a business risk, and a low risk at that, given the paucity of prosecutions to date.

Now, violators will not only be liable to fines but can also lose their illegally gained profits and be forced to pay the costs of reconversion. This is a better deterrent against illegal conversion and an effective remedy against the permanent loss of the rental housing affected by illegal activity. It enables the act to be more than a leaky sieve or a paper tiger and additionally provides a measure of restitution for displaced tenants, who may also apply to be reinstated in their homes.

I would like to turn this over to Eleanor, who will point out a couple of problems that we do have with the act.

Ms Mahoney: Yes, we do have some problems with the amendments to the old legislation which are incorporated in the new. I would like to highlight two of them and then leave an opportunity for there to be a few questions.

I do direct you to the brief, where we outline more than the two that I will be mentioning now. If time permits, I will give a one-minute summary of those at the end.

We think the government has made a real effort to protect tenants against the kind of harassment that we did bring forward to the public eye over the last couple of years, but we do not think it has gone quite far enough, so we would like to discuss that with the committee and see if we can get the committee to take a second look at that, with an intention to improve it.

Section 20 only prohibits the harassment of tenants if it is intended to discourage their participation in the application process under the act. It is our position that usually the landlords who are law abiding and apply under the act are not the landlords who would harass their tenants, although we think it is useful for the government to have such a provision in the Rental Housing Protection Act in case they do. But we would like to see such an amendment to also protect tenants from harassment aimed simply at driving them from their homes. As we will talk in our second area about owner's own use, we believe there is still an incentive for landlords to get vacant possession of the rental units in order to circumvent the act in a legal fashion.

We would like the government to extend the protection against tenant harassment so that the landlords who may be wanting, for financial reasons, to get rid of the tenants in order to convert the unit will at least, upon conviction, be faced with some penalties for this. Perhaps that would be a deterrent and stop it from taking place.

What kind of incentive would the landlords have? We think that certainly landlords who seek to evade the act know it will be easier to do if no one is around to report the violations. This is especially true for activities such as luxury conversion, where the work that is being done may be concealed more readily than, say, demolition. Often, luxury conversions can be done without building permits, unless load-bearing walls or extensive plumbing work is involved.

#### 1620

Thus, there is still an incentive for these landlords to obtain vacant possession, and the tenant harassment is still an issue. The Landlord and Tenant Act does provide a general clause to protect tenants from being harassed out of their apartments and their homes, but we do not believe it is a sufficiently strong deterrent.

For example, section 20 of the bill now before you provides a minimum fine of \$1,000 whereas the Landlord and Tenant Act has no minimum fine, and a maximum fine of only \$2,000, compared with a maximum fine of \$50,000 under this act.

Second, a tenant who is harassed from taking part in the application process under this act may also, if the landlord is convicted of this offence, be a beneficiary of a judge's order to award him up to \$2,000 in damages. This does not require a tenant to apply for this. This is something that the judge may do as part of the conviction sentencing of the landlord.

I think that would send a strong message to tenants that they do have the right to stay in their homes and the right not to be harassed by landlords who are seeking to circumvent this act, as well as the right not to be harassed by landlords who are applying under this act.

It is perverse that, as the bill now stands, a landlord who harasses tenants and circumvents the application process is penalized less than the



landlord who at least has applied to the municipality before harassing the tenant. We do not think that is the kind of perverse message that the Legislature would really like to send out to landlords or tenants in Ontario.

I am going to skip on. Those are the main concerns we have. So we would like to see section 20 amended so it is very similarly worded to—let me see if I can find it here—clause 121(4)(b) of the Landlord and Tenant Act so that there is a complete disincentive for landlords to try to obtain vacant possession of their units by harassing tenants out.

I am going to skip along and talk about conversion for the owner's own use. This act primarily is intended to prevent the loss of rental housing. I think some of the earlier deputants talked about balancing the rights of landlords and tenants in this act, but really it is not balancing between landlords and tenants only; it is balancing between landlords, speculators and developers—it is not really landlords who are affected; it is the speculators and developers who are affected—and tenants, but also the public good and the public intention to protect a rare resource now, which is affordable rental housing in Ontario. So the public interest is at play here, and that is why the Legislature has seen fit to pass the bill in the first place.

Under the current act, there is a blanket prohibition against conversion to any use for a purpose other than rental residential property. The act prohibits equity co-ops; it prohibits apartment hotel units; it prohibits conversion to office space for those units that are covered under the act.

We see a loophole introduced here. I have had a chance to glance very briefly at the amendments that were put before the House, I believe, on Friday, or given to the members of this committee on Friday. I believe that my comments will still apply despite the amendments.

We are concerned that there is a loophole that has been introduced in Bill 211 which did not occur in Bill 11 and we want your committee to close this loophole for us. As Meg has said, vacant buildings are now protected under the act. The government has moved to close one loophole, and we are very pleased about that. But in doing so, we believe it has opened up a new loophole in clause 4(2)(a).

Bill 211 qualifies the prohibition against conversion, and by so doing creates this loophole because a prohibition against conversion does not generally apply where landlords or their families wish to occupy a unit, or several units, on a nonrental basis.

According to clause 4(2)(a), a landlord can convert vacant rental units to nonrental residential units by moving in or by having a family member move in, and no restrictions are placed on this.

Additionally, the bill permits a landlord to evict a tenant for the purposes of converting the rental unit as long as the eviction is to enable the landlord to move in, as permitted by section 105 and as long as the landlord evicts only one tenant every three years using this method.

Those exceptions to the section 105 rule are very good, saying that you can only evict one tenant every three years. We think that is fairly good, but the real loophole occurs in what is not said; that is, if a landlord never serves a notice on a tenant that he intends to take over the tenant's unit, if the landlord gets vacant possession by some other means, such as bribing or harassing the tenant or waiting until natural attrition takes place, there is

no limit on the number of units that the landlord can convert to owner's own use.

We saw a situation that we brought before the public eye on Friday. This is a situation we also have in Parkdale, which we just found out on Friday, so obviously the word is getting around that there is a big loophole in this act, and that is landlords who are taking over vacant units and saying, "Okay, why don't we just knock down the walls between those units and create one large unit for family use?" That is not prohibited under Bill 211, because the prohibition against renovation and repair is only a prohibition against renovating or repairing a rental unit.

If a landlord moves in to, say, two or three adjacent units, they are no longer rental units according to clause 4(2)(a). Therefore, he or she is free to knock down the walls to renovate to join them together. That has a net effect of reducing the number of units in a building. If we are talking about a 50-unit building, one might say, "So what?" although certainly if this bill is intended to prevent the reduction of rental units, we would say it was thwarting the intent of the bill.

Certainly in a smaller building, say a building of five to 10 units, by linking together, by combining several previously rental units that are now occupied by members of the landlord's immediate family, the landlord can then reduce the number of rental units until the entire building is exempt under the Rental Housing Protection Act. That is what we are seeing with the building at 528 Palmerston and that is what we are seeing with a building on Springhurst Avenue. We expect to see a lot more of that if Bill 211 passes without an amendment to take care of that.

I am going to move along quickly here because you only have a few minutes left.

The Chairman: I would like to keep on track because as I am aware that we have to go into the House for a vote later.

Ms. Mahoney: That is right, so we have a few more minutes.

Our coalition is proposing that the fastest and most effective way to deal with this is to take out clause 4(2)(a) so that we have have an unqualified restriction on conversion to uses other than rental accommodation.

I understand that the city of Toronto, which unfortunately was not invited to address this committee, has at least sent a brief which perhaps you have copies of. Their solution is a somewhat different one, and that is to add a prohibition to that list in section 4 to prohibit the reduction of the number of rental units by any means in a building. Perhaps that would suit the bill.

There are two optional approaches that are being put before you by two different groups, one a coalition of legal clinics and social service agencies and one by the city of Toronto. We would urge this committee to take a very careful look at that loophole and attempt to plug it, because as Meg was saying, there are a lot of good aspects to this bill and we would like to see the permanent legislation go forward with no loopholes at all.

The Chairman: Thank you for leaving a little bit of time for questions.

Mr Jackson: Eleanor, you made reference to landlords being predominantly speculators. On what basis can you make that statement?

Ms Mahoney: No, I am not saying that. I am saying that the people who are affected most by this are not the garden variety landlords who wish to run a rental building. The people who are affected most by Bill 211 and by its predecessors are people who wish to change rental stock to other use.

Mr Jackson: Are you not talking about that when you talk about the landlord wishing to move into his own property and, for purposes of his retirement home, for example, taking the two units on the ground floor and making them into one full unit for himself in his own home? Are you not talking about the same thing?

1630

Ms Mahoney: What we are doing is expressing a concern that if such a process results in the exemption of the building, it can result then in the conversion of the entire building to another use. We are also talking about the reduction in the number of rental units. As we say in our coalition's brief, we are not really averse to the idea of a landlord being able to move into his own building, but we are looking at a loophole that could be exploited by people who do not really intend to do that.

We are looking at the loophole that could be exploited, not by the landlord who does want to move into his building for retirement purposes, but by someone who may in fact wish to achieve exemption of the building and then convert it to an entirely different use, landlords who use this only as the first step.

That is the concern we are expressing. We are not here to bash landlords today. We are here to say, is the bill, as it is now, addressing the problems it was intended to address? We think it addresses many of them but it does not address the vacancy problem and the conversion problem.

The Chairman: Do you have a question, Mr Breaugh?

Mr Breaugh: A quick one. I have some concerns about this bill. I understand the good intentions that are behind it and what the government is trying to do, but in the end when I add it all up it does not apply at all in most municipalities across Ontario. In large measure, it requires that the municipalities that do participate in it will be fairly aggressive, certainly—in my view anyway—much more aggressive pursuing this bill than they have been with the previous one and a whole lot of other bills having to do with landlords and tenants.

Do you kind of support the notion that it is better to have the theoretical bill on the book even if you do not have on-the-ground enforcement of the law? I am aware of your background. You are coming from a situation where you are there in place to do battle for tenants, so if you have got the law for you and people who come in contact with you, at least they have got somebody to represent them and support groups they can go to. But around the province that is not the norm; the norm is that the tenant is out there by himself.

They turn to the municipality for help and it says, "Well, sorry, we are not covered under this bill," or "Sorry, our people are off doing something else." That is my problem with the bill, not what is stated in the legislation

or proposed legislation here but the track record, that when they turned to someone to enforce a law there was nobody there. The net effect of that is you might just as well not have any law.

Ms Mahoney: Actually, I think this bill is an improvement over the previous one in that respect. We are concerned that there are exempt municipalities and indeed that the number of municipalities that are exempt has increased. We are concerned about that, but at the same time we recognize that now it is possible, for example, for a tenant who is aware of an illegal conversion to make an application for that building to be reconverted back to its original use. That is a brand-new step that, even if a municipality has not been forthcoming with support, is something that the tenant can rely on himself or herself.

Additionally, the ministry has informed us that it is looking at the number of staff available to enforce this, so it may be possible for people in municipalities with a lackadaisical approach to the bill to come forward and go to the ministry for help or, of course, to their friendly community legal clinic. I would say that the ministry has gone some way to addressing the problem of enforcement and we are pleased to see that. Naturally, it would be nice if the bill applied across the province.

Mr Breaugh: How many people did the ministry advise you it was going to have on staff to enforce this bill?

Ms Mahoney: They did not give us any number.

Mr Breaugh: Do you know how many people the ministry has on staff now to enforce the existing bill?

Ms Mahoney: I believe there are two or three investigators. I may be incorrect on that.

Mr Breaugh: It has got to be the only law on the books in Ontario where there are two people charged with enforcing a law. I cannot think of another example where the enforcement mechanism would be—the parliamentary assistant is getting excited over there so there must now be more than two. I know there is a complement. Purportedly there will eventually be five people.

Mr J. B. Nixon: I never know when the member for Oshawa wants me to participate in these discussions.

Mr Breaugh: How about I pull your string every five minutes and you could chirp up?

Mr J. B. Nixon: I am not sure whether you have got a hold of the string that I want jerked.

Ms Poole: Can we pull your string every five minutes then to keep you from chirping up?

Mr Breaugh: You can always try. People have been doing that for 20 years. Is it five?

Mr J. B. Nixon: There are three investigators right now, but I think —

Mr Breaugh: Three?



Mr J. B. Nixon: You are going to get the whole answer, unfortunately. I think it is important for you to understand that the province spends millions of dollars, and those millions of dollars have increased exponentially in the last four years, funding legal clinics that will supply legal counsel to tenants to assert their rights. While we may not have members of the Ministry of Housing employed in enforcement, we have people who are a little more independent from the government, in legal clinics, who are funded to assist tenants in asserting and enforcing those rights.

Mr Breaugh: I would love to discuss legal clinics and their absence thereof in 90 per cent of the province, but I will go with what—

Mr J. B. Nixon: It is not 90 per cent of the province. I would love to discuss it with you too because the numbers have been increased.

Mr Breaugh: These are going to be three busy people.

The Chairman: We are taking time from the delegation.

Mr Breaugh: We certainly would not want to do that.

The Chairman: Thank you very much for coming before us and sharing with us your perspective on this important legislation.

Our next presentation is from the Federation of Ottawa-Carleton Tenants Associations. I believe Dan McIntyre, executive director of that organization, is here. Good afternoon and welcome to the committee. You heard what I said before about approximately 20 minutes available for presentation and questions, and committee members usually appreciate it if you leave some time for questions.

Mr McIntyre: I will attempt to do that. I am all by my lonesome here. I have a good crowd behind me.

#### FEDERATION OF OTTAWA-CARLETON TENANTS ASSOCIATIONS

Mr McIntyre: First of all, the brief we have prepared is being passed around, but members need not be worried about the weight of it. There are a number of attachments to it including our notes on the bill, some correspondence we have had with the ministry concerning the bill and some political things going back to the promises that I think led to this bill. The brief itself is five pages.

This proposed act is a supportable bill for those rental units and tenants it covers and we are here to support it for those people. The bill, though, is condemned for the thousands it does not cover and amendments are required to that end.

First, the good things: I will not talk a lot about these, but I could if I had to. The bill does cover vacant buildings. It speaks strongly to those who might get caught violating the act, including those who harass tenants. It adds to security of tenure. It has no sunset clause. The bill exists at a time when it is absolutely necessary to prevent conversions, including severances that lead to conversions. The bill was written after several consultations with tenants, including our federation.

Of course, there is a history to this legislation. In 1986, the government brought in an act to preserve the stock of rental housing. This

should have been no surprise as the Liberals had promised to act on this issue both while in opposition and in the early days of their government.

Incredibly, though, in order to get the government to keep its promise, it became necessary for some tenant representatives on the Rent Review Advisory Committee to sign a bad report on rent review reform. That report was a significant pillar in the Liberals' terrible rent review system. That system is a financial bonanza to landlords and a cancer on housing affordability.

Among the many faults of that system is that it falsely purported to encourage more rental supply. In fact, the reason the government only enacted temporary legislation was to work as a bridge until all this new supply came into being.

In July of 1986, legislation was passed. The legislation left lots of big holes. As indicated earlier, some have been patched up. Others are still gaping. One has been made worse.

This act is only for people who live in large municipalities of over 50,000 population. This is worse than the previous 25,000 criterion. Obviously, the supply of rental housing is a bigger issue in bigger municipalities, but this government is ignoring the fact that regional municipalities exist, and are in fact a product of the province. What this means is that smaller cities within large urban areas are exempt from the act.

When tenants are evicted, they look for new housing in their region and usually do not confine their search to the existing municipality. A tenant evicted in Kanata, which is now exempt, will likely look in Nepean or Ottawa for accommodation and thus add strain to the supply of affordable housing in those cities.

What concerns us greatly and passionately on this point is the exclusion of the entire city of Vanier. Vanier is a city surrounded by the city of Ottawa. Most residents are tenants, most are lower-income and most are francophones. Rental stock has been eroded by conversions and unless amendments are made more units will be lost. Tenants in Vanier need this act as much as anybody. They need to know that the province of Ontario is not ignoring them. Our recommendation is that the act should be amended to include all cities within a regional municipality of over 50,000 population.

1640

This act also only applies to buildings or complexes with five or more units. This again leaves thousands of tenants exposed. We understand there is a reluctance to bring smaller owners into this legislation, particularly mom-and-pop-type operators. But we believe that people who are renting out three or four units are in the rental business and ought to be subject to the same rules. Tenants in triplexes and fourplexes must pay full rent; they are entitled to full rights.

It is also misleading to suggest that these owners need the right to take units off the market. The study done for tenants by the Social Planning Council of Metropolitan Toronto indicates that more units have been lost in these complexes than any other size in recent years. So the act should be amended to include triplexes and fourplexes.

We are opposed to the exclusion of registered condominiums that are being marketed as rental buildings. It would be much fairer to apply the

criteria of the act, rather than let this loophole erode the purpose of the act and the security of tenure of tenants. With most newer rental stock in this category, the exclusion creates a ticking time bomb on rental stock in Ontario. The act should be amended to cover all units that are rented, regardless of condominium status.

Finally, the act continues to exclude trailer homes that sit on rented land. In 1987, we witnessed in Nepean the needless destruction of a 31-unit affordable housing trailer park because the Minister of Housing refused to act. This is another chance to act. The act should be amended to cover mobile homes.

In all of the above, all we are looking for is for tenants to be treated equally by our laws. A tenant is a tenant.

Once again, the government is passing legislation for municipalities to administer. The cities are also being given authority to make deals in return for approvals. If these deals are not enforceable or workable and they begin with a number of tenants being evicted, then the act will fail. We would seek active monitoring of any such deals and significant tenant input before allowing them to pave the way for a loss of affordable rental stock.

We are also perturbed that the required public meeting under this law is being allowed to be held on Monday mornings at 9:30 am. Public meetings should be in the evening.

We want to express some concern about removing the word "affordable" from the approval criteria. We suspect cases will occur where a number of units affordable to most will be replaced by equal numbers of much higher priced units. It would be far better for the government to define "affordable" in such a way that conversions would be deterred. I might note that we are in disagreement with some of our friends on this particular point.

The ability to enforce this act is questionable. The bill looks good on paper, but if there is no active and visible enforcement the act will become useless. We call on the government to commit to enforcement spending in order to make this act meaningful.

This bill will allow conversions to rooming houses. As this threatens security of tenure for existing tenants, we must oppose this change. It is far better to put such conversions to the test of this act and to build more nonprofit rooming houses. Sometimes these conversions will be legitimate; sometimes they will be end runs around legislation. It should always be remembered that this act is not a freeze on conversions. It simply says to the municipality, "You can't convert unless you get approval from the municipality." It is always open.

Finally, a concern that is fundamental to this type of legislation: Tenants are not aware of this protection. Worse, tenants have never been given the feeling that this government is interested in protecting their best interests. Thus, many simply leave buildings at the threat of conversion. The social planning council study shows that tenants are leaving despite existence of a Rental Housing Protection Act.

We have asked the government to provide us with funding to retain a full-time staff person to work exclusively on the Rental Housing Protection Act. This person would be both an advocate and an educator. The answer so far has been no. We think this kind of work is essential on this legislation and

in rent review and in Landlord and Tenant Act matters. We are capable and anxious to provide the service. It is a way of co-operation between the province and tenants organizations. Let's be proactive in working with this legislation.

Today, we look at Bill 211 and we see some good things in it and we are here to support those good things, but we see an incomplete picture with a lot of things missing. If the Legislature can get those missing things into the bill through amendments, then the picture will be a lot better for the tenants of Ontario.

The Chairman: Thank you very much, Mr McIntyre, and thank you for leaving some time for questions, starting with Mr Harris, and then Mr Breaugh.

Mr Harris: On page 3 of your brief, you indicate that the act should be amended to cover all units that are rented, regardless of condominium status. In the preamble, you say that most new or rental stock is in this category of registered condominiums. We have heard from another presenter who said there will be zero units in this category in the future if they are included. Do you have any comment on that?

Mr McIntyre: It is a difficult point to get right to the meat of, but it seems to me that despite the fact there has been a Rental Housing Protection Act and despite the fact there have been so-called rent controls, condominiums are being built and are being rented as rental units. I think that there must be some enticement there. There is an enticement because it is happening.

I do not see that this act takes it out because this act does not freeze conversions. This act only says: "Go to the municipality and seek an approval." Therefore, the municipality can look at it from the point of view of public good. Therefore, an investor is going to look at the same types of things he always looks at, including the possibility that some intervention may dampen the generous rate of return he may be seeking. That is a risk they may or may not choose to take.

By far the better route in our view is for the public to take greater control of its own housing and for more nonprofit and more supply to be built, and I know this government has done some work in that area. There is a long way to go. I think that is the better route to take because I am not convinced the demand is there either way in great numbers, but I am not a scientist on that point.

Mr Harris: The second thing I want to ask you about is the triplexes and fourplexes, but before I do, let me ask you this: Would you agree that supply is indeed the problem in this province, or in many areas of the province, that there is a shortage of supply that reduces the options tenants have?

Mr McIntyre: I believe supply is a problem. I believe it is at least equalled by the affordability problem and is also equalled by the lack of security of tenants. I do not disagree it is a problem; I do not agree it is the problem.

Mr Harris: If there were a large supply of affordable units, would that solve the problem?

Mr McIntyre: That might, and I think we might be back here in a few



years dealing with that, if in fact the supply were to come on stream. I have given my view as to where that supply should primarily come from.

Mr Harris: On the triplexes and fourplexes, if they were included and you were an investor, would you not want to build two duplexes instead of one fourplex, knowing that you could very likely never, ever, as long as the supply problem is not solved, and the likelihood of the government being able to do it in the direction it is going being zero in our lifetime, why would you build triplexes and fourplexes? Do you not think that anything that discourages that now encourages people in the future to build duplexes instead of fourplexes? Thereby, half the number of units—

Mr McIntyre: In 1986, a new rent review law was passed that ensured a rate of return on the regulated rent. Therefore, if someone is going to go into the rental business, there is no prohibition on them making a profit. So either they are going into the rental business or into the speculation business. If they are in the rental business, the current rent review law will not stop them from making good money. The market might, but the current rent review law does not.

Mr Harris: Why are not more people going into it then?

Mr McIntyre: I come from a city where the vacancy rate is up 1.5 per cent right now, and I think you will find that actually more people are going into it. At 12 o'clock at night, I tend to flip channels between question period and the guy on channel 6 selling real estate courses to people who can make all sorts of money by buying properties with nothing down and renting them out.

Mr Breaugh: It's not the same guy, is it?

Mr McIntyre: I think there are a number of people going into it. In fact, last year I spoke to some rather odd groups, including an audience of about 150 called the Real Estate Network of Entrepreneurs, all of whom were young and looking to make money investing in property that they were then going to then rent out.

I think there are a lot of people doing it. I think there are a lot of people doing it. I think there is a good ball game being played by some of the landlord activists to suggest that there is not any money to be made and that if you take away regulations they can make a little bit more. I do not blame them for playing that game, but I do not think it is quite accurate.

1650

Mr Harris: I want to make sure I understand you right, that even if including condominiums or reducing it to two units or less restricted and prohibited people from getting into this business or restricted the building of condominiums, you would not see that as a significant downside because you do not think that is the solution to the problem in the long run anyway. You think it is going to take co-ops and nonprofits and these types of units to solve the problem.

Mr McIntyre: Yes, I think that is the primary solution.

Mr Harris: I do not want to put words in your mouth. I am not saying 100 per cent that is it, but you would see that as a generality.

Mr McIntyre: Yes. If someone wants to go into the rental business, he can go into the rental business, but please do not go in buying triplexes where your general intent is to eventually rid yourselves of the tenants. Those are whose interests we wish to protect and is in the greater public good. But people who rent out units can make money.

Mr Breaugh: You are kind of unusual in the sense that you are one of the few people appearing before us or who has written to us, even, from outside of Metropolitan Toronto. I want to take the chance to explore that a little bit. One of my frustrations is that the people who draft this kind of bill do not seem to know that there is a province outside of Metropolitan Toronto and that is part of my problem with the bill.

If you look at what is covered and what is not covered, and if you look at the existing rental stock in most small towns in Ontario, it is not only not covered because it does not have the population base, but by definition of what the rental stock is in that community, it is exempted too. You took note of the mobile homes, for example, and in many rural parts of the province the only rental accommodation available probably is that somebody has got an old house with two or three apartments in it---exempt. There may be some duplexes around--- exempt. There may be a variation of the mobile home theme, whether that is a modular home or whatever it is---also exempt.

So for those tenants in most of the province, they are exempted from the act for starters. Even if they were brought in under the act, they do not have the local support system to insist on their legal rights that, say, somebody in Toronto would have. We argue as to whether or not the support system is enough in our urban centres but it is nonexistent in our rural centres. That is part of my problem and I appreciate your comments on it.

The Chairman: Are you leading to a question?

Mr Breaugh: Well it might lead to a question, yes, if I feel like it.

Mr McIntyre: Actually, in principle, the reason I take a pass on not suggesting duplexes and singles be covered is because as a pragmatist I do not think government could do the job anyway-- any government. So that is the practical problem. In small municipalities, we have just taken a major step as tenants. We formed the United Tenants of Ontario two weeks ago and you will be hearing a lot more from them, but it is a major problem.

Frankly, Ottawa is a big city, but we are a little jealous of people like Eleanor Mahoney and Michael Melling who do terrific work for tenants here from legal clinics. Our legal clinics do not touch rent review and so far have not touched the Rental Housing Protection Act. When we asked for a specialty clinic for tenants, we were turned down in the City of Ottawa, so we have problems and we are suggesting ways that can be done through our offices. Sometimes I think it is seen as self-serving but I truly believe it is not self-serving; it is for the best interests of the legislation for tenants.

For the smaller communities you have got a problem, and I am not adept enough to figure out exactly how to do it, but it seems to me it might be worth trying to do it rather than to leave them out.

Mr J. B. Nixon: I have a quick question. You remember, I think, when we heard from the Association of Municipalities of Ontario. You may not know that they have made the case to us that in small towns and villages where you probably only have a municipal clerk and the vacancy rate is at a reasonable

level from the point of view of many people, from anyone, and all of the housing, rental and freehold, that is available is available at affordable prices, that it is an unwanted intrusion for Queen's Park to impose the regime of the Rental Housing Protection Act on those 700 taxpayers who have to pay for another few hours of the clerk's time every time an application for a demolition or renovation is made, or a conversion, if it is just a conversion. Do you have any comments on that?

Mr Breaugh: That's a good question.

Mr J. B. Nixon: Thank you.

Mr McIntyre: Coming from a large municipality, I do not want to seem to be the expert on small municipalities.

Mr J. B. Nixon: You are advocating extension of the bill to all 850 municipalities in Ontario.

Mr McIntyre: With respect, I am advocating within our brief the extension to all municipalities within a regional municipality of over 50,000, which would bring in smaller communities within the bigger communities. Frankly, I am just engaging in discussion of how it could go. We do not have a mandate to speak for the smaller municipalities; therefore, I have no official position on that. I think it could be tried. I think it would be a matter of approvals, but it is not the point I have come here to argue for. I leave that to Mr Breaugh and yourself to argue about, because I think it is a valid point

Mr J. B. Nixon: I am not sure that we would argue about it.

Mr McIntyre: Discuss.

Mr J. B. Nixon: I want to be clear that you are not advocating the extension of the Rental Housing Protection Act and its application throughout the entire province. You are not advocating that.

Mr McIntyre: I am not advocating that as an official position. I am just discussing it.

The Chairman: I have a question for clarification. Have you identified the number of municipalities that would be added in with your recommendation? Have you looked at the regions?

Mr McIntyre: No. I know it would add two municipalities within our region and that is important to us. We have people we work with in both those municipalities—

The Chairman: You have not analysed how it affects other regions.

Mr McIntyre: I understand a number of communities east of Toronto, in particular, have been excluded by the change, and I believe my suggested amendment would bring in a whole lot of communities within a 50-mile radius of Toronto, but again, you have got me geographically here.

The Chairman: Okay. I just thought perhaps you had that.

Mr Owen: On the bottom of page 3, you refer to the situation in Nepean. Could you tell me if the people who are involved there owned the units, or did they rent the units?

Mr McIntyre: They owned the trailer home and they rented the land. The land went through a municipal process, got some zoning adjustments and now has lovely \$200,000 estate homes on the river.

Mr Owen: The argument given to me has been that often this type of development occurred when the location was more rural, and as the area became more urbanized, the land became so valuable and the need for housing became so much more critical that—for example, here the 31 units could have been expanded, or in other situations, it has been argued with me, to maybe 200 units on the same acreage, on that very much more expensive, costly land.

I am wondering what your comment might be on the fact that instead of having 30 units, in that same acreage you might end up with a building or a structure which would accommodate 100 or 200 units.

Mr McIntyre: Again, that is where this bill is not a freeze on conversion. It says: "Come make an application. We will look at the merits of your application." If the application has merits, the city could approve it.

The point I would like to touch on is that when municipalities such as Ottawa-Carleton have grown out and sort of encompassed these trailer parks, yes, the land has become more valuable as it would be defined by any real estate agent, etc. I wonder what happened to the rights of the tenants, why they then become invaluable in the process. They do not have a value any more. They are dispensable. In this case, it was tragic. I have never seen such stress put on families and people. All of them took a financial and emotional beating through that process.

Mr Owen: There was no other place where they could locate.

Mr McIntyre: There were a lot of efforts made, and actually I have given the city of Nepean council, a council that has not had a lot of experience in this area, a lot of credit for making some efforts. They made efforts and some people were rehoused, but all of them lost on their investment. They had bought trailers that no longer had any value because there was no place to put them, but they still had to pay for them.

1700

Mr Owen: What happened to the trailers?

Mr McIntyre: Oh, some have been stored. Some are about 60 miles outside the city now. People are commuting into work.

Mr Owen: Used by other people, I suppose?

Mr McIntyre: Sometimes. Some people just took an out-and-out complete loss on them.

The Chairman: Thank you very much for coming here today and sharing your perspective with us.

Our next presentation is from the Tenant Advocacy Group; representing that organization is John DeKlerk.

Mr Abramowicz: Actually that will change and we will be representing our group.



The Chairman: Would you introduce the group then, so that we have it straight?

TENANT ADVOCACY GROUP

Mr Abramowicz: My name is Lenny Abramowicz and to my right is Deborah Wandell. I work at Neighbourhood Legal Services and Ms Wandell works at Scarborough Community Legal Services. We are here on behalf of TAG, the Tenant Advocacy Group. This group is made up of lawyers and legal workers who practise landlord and tenant law in Toronto's legal clinics. As well, there are members of the Federation of Metro Toronto Tenants' Associations in TAG.

First of all, I would like to thank you for the opportunity to come and address your committee on this important subject, on the topic of Bill 211. As a first point, I think it is important to state that TAG sees the creation and enactment of Bill 211 as a positive step, as a small step but a step in the right direction, and there are two reasons for that which I would like to bring to the committee's attention.

First, we see the creation of Bill 211 by the government as the government's recognition of the ongoing crisis situation with respect to affordable rental housing. Therefore, we see that the enactment of Bill 211 would reaffirm the government's commitment to protect the existing rental housing stock, especially as, as the legislation is now drafted, it is seen as permanent legislation.

Second, we see the creation of Bill 211 also as a recognition of the serious problems that existed with the old Rental Housing Protection Act, problems that we who work with legal clinics dealt with every single day in our day-to-day work.

I would like to mention three of those problems very briefly: First, the so-called vacant building loophole in the old law was plugged; second, the six-month limitation period on prosecutions has been extended in the new legislation to two years; third, we see the fact that a legally converted rental property can now be reconverted on an application to district court as a crucial improvement in the legislation. Without such a provision in this act, the Rental Housing Protection Act would be no more than really just a licensing fee for landlords who intended to fly in the face of the legislation

These three and other points are things that we see as improvements in Bill 211 on the old legislation. As I say, the fact that the legislation exists and is being made permanent legislation is a significant step, from our position.

However, we still see some major problems with Bill 211. Despite its improvements, the new Rental Housing Protection Act has many serious and severe weaknesses that we would like you to turn your attention to and hopefully rectify before it is enacted. Too many tenants are still left unprotected and too many rental units are still left vulnerable and at risk of being taken off the rental market.

Ms Wandell and I will now go through some of our concerns. Our concerns are, of course, stated in written form in our brief as well and we would ask you to turn your attention to that, but very briefly we will touch on our major concerns with the existing legislation. I will ask Ms Wandell to begin with these.

Ms. Wandell: Bill 211 at present requires that the landlord applicant must satisfy one of three criteria before the landlord can demolish or convert or renovate. I will briefly outline the criteria and our concerns with each of them.

Under the first criterion, if demolition has been applied for, council must assess whether the property is unsafe and unfit for habitation. If the application is for renovation or repair, the first criterion requires that council consider whether or not (a) the property would be unsafe and unfit if the renovations were not done and (b) if the work to be done requires vacant possession.

It is our submission that this criterion is redundant in light of section 3 of regulation 434, which is already in the legislation. This section exempts the demolition of certain buildings from RHPA approval requirements. The exemption under this section is permitted on two grounds: If the building is subject to an order for demolition under the Building Code Act or if the building is subject to a removal order under the Fire Marshals Act, then the RHPA provisions do not apply.

Therefore, we submit that demolition should only be permitted where municipal officers, acting under the Building Code Act or the Fire Marshals Act, have found buildings to be unsafe and unfit for habitation. This would make it unnecessary for landlords to retain experts to attest to the conditions of their buildings.

The second criterion which a landlord may be required to meet is that the applicant must replace the property that he is either renovating or converting with (a) the same number of new units, (b) units in a similar rental range and (c) units in the same area.

We have three concerns here. One is that the nature of the replacement units should be clarified. It should be required that they have a similar quality and size as the units that are being converted or demolished. The legislation already provides that the units which are to be provided to displaced tenants must be of a similar quality and size to the ones they are presently living in.

Second, we would like to have the term "similar quality" clarified and made more precise.

Third, any replacement units that a landlord is willing to provide in order to comply with this criterion should automatically be covered by the act, whether or not they are scattered housing, less than five units in a building, or in any other way exempt from the act. This would prevent landlords from displacing tenants and building replacement units but building units that are not covered by this legislation, which is meant to protect housing that exists.

The third criterion under the 1986 legislation stated that approval for a landlord's application could be granted if the application did not adversely affect the supply of affordable rental housing. Bill 211 has taken out the word "affordable." The rationale for this is that then landlords cannot use the argument that the units concerned are too expensive to be considered affordable and therefore affordable housing is not affected.

There are two points to make here, however. If the word "affordable" is removed from this clause, then the criterion only requires that the overall

supply of rental housing not be adversely affected. What results here is that the landlord may succeed in his application because there is a sufficient supply of housing on the market or there is a reasonable vacancy rate. However, this vacancy rate and the supply of housing may be entirely in the very high end of the market and the landlord may in fact be applying to remove affordable housing from the market.

The second consideration here is that if you delete the word "affordable," this permits wholesale luxury renovations, because luxury renovations often do not actually affect the quantity of housing or the supply of housing as such. What they affect is the nature of that housing. They turn it from an affordable unit into a very unaffordable one.

Therefore, it is submitted that this criterion should be dropped altogether, as there is a great shortage of housing across the market. If it happens at some point that certain sectors of the housing market become less tight, then amendments could be made to the legislation.

The second point I would like to deal with is that the legislation as it is now drafted only allows these criteria provisions to be brought into operation after the landlord has made an application requesting approval. However, if you consider the situation of a landlord who does not make an application for approval to renovate or repair but simply begins working around the tenant while the tenant is in possession, this captures the situation that exists in a lot of apartment buildings today.

1710

The landlord may effect luxury renovations, major plumbing repair jobs, major changes in the kitchens and bathrooms. These capital expenditures are then paid for by the tenant under the pass-through rent review system and the rent, by reflecting these changes, becomes unaffordable. To prevent this situation, there should be a mechanism whereby the tenant can go to some body and have this matter addressed and have it determined as to whether or not the work that is being done is really work that requires vacant possession, which the landlord has not asked for.

There is one other instance where luxury renovations are effected, not by doing major work but by simply providing all kinds of appliances that are then passed through, again as capital expenditures. Sometimes the rents go up as much as 70 per cent when tenants are provided with freezers and microwaves, etc. We think this situation could be dealt with by defining luxury renovations as: (1) the addition of services and facilities; or (2) any unnecessary modifications which result in a rent increase of more than 10 per cent under the present rent review legislation.

Finally, the last point I would like to deal with is the question of the draft condominium exemption. If this bill is truly meant to ensure that affordable housing is maintained in Toronto, it must address the fact that 80 per cent of the rental housing that has been built in the past 15 years and up to 99 per cent of the rental housing that is now being built is covered by draft plan approval of condominium units such that at any time these units can be converted to condominiums and the tenants have no recourse but to either find a down payment for their unit or be given 60 days' notice and be forced to vacate when a new owner wishes to move in. There should be recognition of this very serious threat of a time bomb ticking on these units.

Mr Abramowicz: I would like to pick up there with a couple of other

concerns that TAG has, specifically the exemption for buildings with under five units.

We mention in our brief that we cannot in any way understand why this exemption exists. Most studies show that these quadplexes and many of these smaller buildings are a large source of affordable housing, for people who are on lower incomes especially. As well, most of the studies tend to show that these units are the ones that are disappearing at a very fast rate, especially because they were exempted under the last legislation as well. We cannot in any way see any rationale for this.

If you lower the exemption to one unit, allowing an owner of a house to put somebody in his basement and then evict the person, if necessary, once he has finished paying off the mortgage, that does not affect the bona fide landlord who lives in the place and wants to rent out one unit.

However, that is usually not the case in the quadplexes. We cannot see in any way why there is any difference in terms of a situation where there are four units and a situation where there are eight or 10 units, and as we are losing this affordable housing, we believe this is a crucial thing which this committee should turn its mind to.

As well, we would like to point out that on the penalty provisions, which I believe were mentioned earlier by the Coalition for the Protection of Rental Housing, we share some similar concerns.

Primarily, the harassment offence, which exists only if the landlord harasses tenants so as to discourage participation in the application process, is much too limited. As legal workers, we see many instances in which landlords who have absolutely no intention whatsoever of ever involving themselves in any application process begin the harassment well before that.

As was stated earlier, it seems ludicrous to have a situation where a landlord who has no intention of getting involved in the application process should be exempt from a \$50,000 fine and perhaps just leave himself open to a \$2,000 fine under the Landlord and Tenant Act, whereas one who intends to play the game properly and follow the legislation should bring a bigger potential liability upon himself. It does not seem to be reasonable.

As well, we are concerned about the "due diligence" defence, which is codified in the legislation. We are concerned that the defence it provides for landlords is too broad. It seems to provide an incentive for landlords, especially corporate landlords, who have a few layers of insulation between themselves and the property managers who are running their buildings, to be wilfully ignorant.

On the owner's own use issue, we are concerned about the inclusion of the landlord's right to convert rental units through a landlord's own use application. If you allow for a situation of homes, again, homes with one unit in them, to be exempt from the legislation, that is, an additional rental unit to be exempt from the legislation, then you are covering the situation of most landlords who want to move in and then take over their basement once they have finished paying off the mortgage.

Similarly, if you are going to come to us and state that a landlord wants to put his daughter or son into his 12-unit or multiunit apartment building, there is no problem with this because he can evict for landlord's



own use under section 105 of the Landlord and Tenant Act, have the daughter or son move in and this will not be conversion if it remains a rental unit. Therefore, that also is not a concern.

While we are concerned about the broadness of this right, as well we are concerned about how it will be monitored. We have suggested that once a landlord uses a section 105 application in this circumstance, it be registered with the rent registry. That would be a way for the tenant to truly check if a landlord was doing it more than once every three years, which the legislation prohibits him from doing.

We very much would like to echo the concerns that were stated very eloquently by the Coalition for the Protection of Rental Housing about landlords using own use provisions to take over vacant units in buildings. We see this as a critical loophole in the legislation as it now exists and hope the ministry and this committee will turn their minds to it and try to come up with some way of closing that loophole.

We especially would like to reiterate the concern about landlords being able to enter into rooming houses and then via the exclusion in the Landlord and Tenant Act for landlords who share facilities with other tenants, be able to remove the entire rooming house from the rental market.

Our last concern, as was stated before, is the exemption for municipalities under 50,000. I will not go into any detail on it as it was dealt with before. The only thing we would like to add is that it is our concern that if you allow surrounding municipalities to be exempt from this legislation, especially larger municipalities, then all you are doing is transferring the problem and putting the pressure on the municipalities that in fact are covered by allowing for the exemptions of the surrounding municipalities.

In conclusion, we are happy Bill 211 has been drafted. We see it as a step in the right direction. It indicates the government's commitment and some improvements on the earlier legislation, but in our opinion there is no point in going in half measures.

If we intend to protect the supply of rental housing in this province, and as we are all aware there is a crisis with respect to the existence of affordable rental housing, then let's draft effective legislation. If we all agree on that, then let's work together and make sure that the loopholes are plugged and that there is sufficient amount of coverage in the legislation for the people of Ontario. That way, we perhaps will be able to do something about the crisis situation that now exists.

The Chairman: We have some questions, starting with the member for York Mills.

Mr J. B. Nixon: I appreciate your having made comments about the so-called three criteria for municipal approval, but everyone should be aware, and I hope on the committee—it goes back to our regulatory criteria and is subject to amendment. I expect that may or may not occur as we determine whether or not the criteria are working as everyone wants them to.

I was not sure if you understood the proposed change in the first criterion which, instead of the words "unsafe and unfit for human habitation"

as the criterion to allow change, is to use "structurally unsound." You understood that?

Ms Wandell: Yes.

Mr J. B. Nixon: Then I do not understand the point you are making.

Ms Wandell: If you are talking about structural unsoundness, we are concerned that this matter will be left to experts brought in by a landlord, which will—

Mr J. B. Nixon: Let me stop you there. That is probably where the misunderstanding is. The determination of structural unsoundness is by municipal officials.

Ms Wandell: It will be their decision?

Mr J. B. Nixon: Yes.

Ms Wandell: Then it is dealt with?

1720

Mr Abramowicz: Part of what you are referring to is in the regulations. It is dealt with under existing regulation 3. We see—

Mr J. B. Nixon: That is exactly one reason we changed it, because the determination as to what is "unsafe and unfit for human habitation" is a much more subjective matter of opinion. It would be quite easy to allow services to deteriorate and run down and have rats run around, and then say, "This is unsafe and unfit for human habitation; we have to allow a demolition," whereas structural unsoundness has a much more precise definition under the building code; than an elected and a nonelected official to make that determination.

Ms Wandell: Then it is simply a matter of redundancy. If the Building Code Act and the Fire Marshals Act are dealt with in one section and buildings that are slotted for demolition under those acts are exempt from the Rental Housing Protection Act, then we think that is a sufficient criterion to use and there is no need for another criterion that also says municipal officials will come in and determine the state of the building. That can be done under the other two acts.

Mr J. B. Nixon: They are doing it under both. It is the same official doing it under both acts at the same time. You would not come back—

The Chairman: I would like to get a couple of other questioners in too.

Mr Harris: On page 7 of your brief, you indicate that subsection 25(4) exempts about 80 per cent of the rental housing built in the past 15 years and 99 per cent of the rental housing now being built. I had asked a previous group about my concern about the future. You indicated that you estimate 99 per cent of the rental housing now being built are condominium buildings, and I would assume you would agree sold primarily to investors. That is how the capital is raised to put those units on the market.

We have heard from industry people and a number of others, as would not surprise you, who have written indicating that this investment vehicle, the likelihood of being able to proceed, is zero in the future and that in fact they think a number of units even under construction could lose their financing from the banks, in that they would now be treated as rental accommodation and those buildings are worth less than half as much as they are worth if they are separate entities. Do you have concerns that in the future, if they are included under the act, this source of 99 per cent of the current new rental housing will dry up?

Mr Abramowicz: I have two points to make and actually one query. I was here when the previous groups—I believe there was a real estate group—came and they in fact indicated that only something between 10 to 15 per cent of these properties that are being built are being built with the intention of the investor to move into the property. That strikes me as probably pretty correct.

Why I am confused about this is that if that is the case and these properties are being built as rental investment properties, then why in God's name would they be at all concerned that they remain as investment rental properties? Where I get worried is where it is built as rental property and then it gets taken off the market and the rug gets pulled out from under the people living there.

If, as the people who presented previously are stating that only 10 to 15 per cent are built in that way, then we have no problem here. Then 85 per cent of the property is being built for exactly the reason this act exists to protect. It is being built to allow for rental units and let's keep it as rental units. Nobody loses investment because of that. The property appreciates, and as a person stated before, they get their monthly or yearly interest.

Mr Harris: They did not say 10 to 15 per cent was being built. They said their experience was, and I think he was giving an estimate, that 10 to 15 per cent actually exercised the option of wanting to occupy their particular unit. But they also stated that 100 per cent of the people will not pay that price, nor can they finance it nor will the banks lend them the money, if the unit is to be treated solely as a rental unit.

If they do not at some point have the option to either get some capital appreciation, because most of these units, when you look at them—I have met with several of them to try and go through the figures and understand them. I think you would concur with me that because of the price they are paying and the rents they are getting, they are losing money; they cannot—

Mr Abramowicz: I cannot agree.

Interjection: Give your head a shake.

Mr Harris: How is that? This way too? If you can show me where it is—I have looked at the books of a number of the companies and they are losing money on the cash flow, on the rents. They are quite prepared to do that if they have an investment, if they have a piece of property that they think will give capital appreciation in the future. That is indeed the only reason they are prepared to put up that money. Every single solitary company I have talked to tells me it cannot sell it. Nobody will buy it. They would be stupid to buy it if it is there in the future.

If you have facts otherwise, then give me those facts. You tell me that 99 per cent of all new construction, of new units going on the market, is done in this way. They tell me zero will go on if they are done this way. Does that not concern you?

Mr Abramowicz: I cannot in any way believe that properties that are being built as rental properties will not increase in value. That has been the case, to my knowledge, to this date.

Mr Harris: Of course they are going to increase in value. That is where they are getting their money. They are not making it on the rents.

Mr Abramowicz: The point is that nothing whatsoever will prohibit these people from selling their properties later on. If they come and say that nobody will buy them, this is something I cannot believe. Rental properties are being bought and sold on a day-to-day basis at incredible increases in value for people. They are saying the only way they will do it is if they can then take it from being rental and turn it into commercial the next day. This is where I have the problem.

Mr Breaugh: Part of my concern is what this bill does not do. I think you are right. You have a line in here that there is a lot to like about Bill 211 if you are a tenant advocate. I think that is true. If you are working in downtown Toronto or a Metropolitan Toronto area as an advocate for tenants, this talks about things that are of interest to you.

But my problem is a little broader than that. I am very unhappy that most of the new construction I know of across Ontario is registered as a condominium and then rented, so it is totally exempted from this act. Most of the geography of Ontario is totally exempted from this act, simply because it is not in a population base of more than 50,000. Most of the people who complain to me do not have anybody else to complain to like the Tenant Advocacy Group. That is a continuing problem.

I am concerned about the exemptions, the things that are not here. I am not concerned, just to point out some of the things where Mr Harris and I might disagree, about the investors. I do not know why they are complaining. They are not covered under this bill. This is not meant to be an Investment in Real Estate Protection Act. It is not that at all, but it does one hell of a job in doing just that: They are all exempted. If they cannot figure out that they should invest in buildings in Ajax instead of in Scarborough, they should not be investing money.

I would like to hear a little bit about your comments on that. Frankly, one of my concerns is that if you are a tenant advocate, if you are working in a legal clinic, this talks about a lot of things that are of interest to you, and in a theoretical sense it is better than the previous act. But my basic concern is, read this bill a few times and tell me if you cannot find where the new loopholes are, because I can, and people are already beginning to testify before the committee about interpretations of a particular section of the act.

I do not intend to give the development industry free legal advice here, but it should sleep well tonight. There are as many loopholes in this bill as there were in the previous one. It might take them another three weeks to find them all, but they will find them; they are very skilled at that. My problem is that most tenants are not skilled. They want a place to live. That is their



primary concern and they are not interested in the niceties of the law. I would appreciate your comments on that.

Mr Abramowicz: I must admit that those are many of our same concerns. We had to deal with the legislation as it was presented to us and we decided it is a step in the right direction. We are very concerned about the exemptions under the act, both in terms of actual people, areas and geography, as well as the types of units that are exempted. Those concerns are placed within our brief. We are also very concerned, as you mentioned at the end, about the loopholes that exist. Since turning our minds to this seriously over the last few weeks, we have found a number of loopholes, and we agree that the landlords of this province will find them very soon as well. If they have been sitting here listening to these depositions, they will have found them already

We hope that if the government of Ontario truly wishes to work with us to create an effective Rental Housing Protection Act, and that if we share the same concerns, the same values and the same interests here, we will in fact plug up these loopholes and expand the coverage of the legislation. That is exactly what our brief says and that is what we hope will come out of these hearings.

1730

The Chairman: Thank you very much for coming before the committee and sharing with us your perspective on this important legislation.

We have one final brief today from the Federation of Metro Tenants' Associations. Are you Mr Melling?

Mr Hale: No. this is Mr Melling. I am Mr Hale. I am helping out, but he is doing all the talking.

The Chairman: Okay. Welcome to the committee.

#### FEDERATION OF METRO TENANTS' ASSOCIATIONS

Mr Melling: Good afternoon. My name is Michael Melling. I am chairperson of the Federation of Metro Tenants' Associations. Mr Hale has already introduced himself. He is the chairperson of our law reform committee and he is here to assist me today.

I want to begin by thanking the committee for the invitation to attend and to make a presentation to the committee. I understand that everyone who appears here today appears by invitation, and I understand that is the case because there is urgency in passing this bill. As we support the bill, we support the urgency. That having been the case, I did come prepared with 4,145 tenants.

I would like to present to the committee a petition which we circulated asking for strengthening of the Rental Housing Protection Act, 1986, and we are pleased that in many respects the Rental Housing Protection Act, 1989, or Bill 211, addresses many of the concerns of those tenants.

The Federation of Metro Tenants' Associations is an umbrella organization of tenants in the Metropolitan Toronto area that has approximately 200 affiliated tenants' associations. It is now about 15 years old and we believe our associations cover about 87,000 residential tenants in the municipality of Metropolitan Toronto. Our affairs are governed by a

22-member board of directors of which I am the chair. One of our primary goals or objectives is the preservation of the rapidly dwindling supply of affordable rental housing in the province of Ontario.

I am here today to tell the committee primarily that we support this legislation and we urge its passage, although we would like to urge upon you a couple of amendments to it that will further the objectives we see in the legislation.

We support, as do some of the previous deputants today, the efforts by the government and commend the efforts by the government to clear up some of the problems with the prior legislation, in particular to deal with the vacant buildings exemption, to extend the limitation period for prosecutions under the act, to give the power to courts to order reconversion of illegally converted buildings. We also support the stepped-up enforcement measures that are in the new legislation.

The purpose of this legislation in my submission is twofold. I think it is important to recognize which is the primary purpose and which is the secondary purpose. The primary purpose is not, as some people assume, the protection of the rights of tenants. That is the secondary purpose of this legislation. Its primary purpose is to protect housing, not tenants. It does improve the security of tenure of tenants who live in that housing, but first and foremost, it is designed to stop frustrating the provincial government's attempts to have enough affordable housing in the province.

I urge upon you the following proposition: There is no point in spending \$3 billion of the province's money creating 30,000 new rental units, of which most will be affordable, if you allow an equal or greater number of units in our older and existing stock to disappear over the same period of time. Protection of the existing stock is as important as the creation of new stock, and that is why this legislation is so important.

I want to urge improvements in the legislation in two different areas—I will do so briefly, as previous deputants have addressed these issues—first, with respect to the approval criteria, and second, with respect to the exemptions from the legislation.

Turning first to the approval criteria, our submission to you is that the approval criteria are the guts of this legislation; they are what this legislation is all about. To us, it appears anomalous that the approval criteria will be regulatory as opposed to legislative. Therefore, in our brief we urge upon you the inclusion of the criteria for approval in the legislation itself. We have now had three years of experience with the predecessor criteria under Bill 11. We believe that experience provides lessons, one of which is that it would be better were the criteria included in the legislation. That is our first recommendation, that they be included. \*

Turning to the substance of the criteria itself, first, to deal with criterion 1, which is "unsafe and unfit," the parliamentary assistant has kindly pointed out the intention of the government to change that to be "structurally sound." We believe that will address the concerns we have expressed in our brief that a landlord could retain a private engineering firm or a private consultant who would be prepared to say that even though the building was not the subject of an order under the Building Code Act or the Fire Marshals Act, it still merited demolition because it was unsafe or unfit for human habitation.

However, I think the point that was made by Ms Wendell for the Tenant Advocacy Group still stands; that is, if there is provision in the regulations for the new legislation that orders can be made for removal under the Fire Marshals Act or for demolition under the Building Code Act, then those in and of themselves will be sufficient to take care of the situation the government has in mind here. So we would recommend that you include that as a criterion in the legislation itself.

Secondly, to deal briefly with criterion 3, criterion 3 is that an application may be approved if, in the opinion of the council, it does not adversely affect the supply of, and then under Bill 11, the stock of affordable rental housing—under the proposed Bill 211, it could be, although we are not yet sure—and the supply of rental housing in the municipality.

I want to tell you just a brief bit about our experience of this criterion under the prior legislation. One of the things we did was to go to the Ministry of Housing and ask for funding to have a study done of all the applications that were processed under the previous legislation. This paper here by the Social Planning Council of Metropolitan Toronto examined all of the applications throughout all the affected municipalities. They found that the vast majority, indeed 70 per cent of all applications that were processed under the previous legislation, were processed under criterion 3; they would not affect the supply of affordable housing.

I think those applications are unique in that they demonstrate the danger of ambiguous drafting in legislation or regulation. The decisions of the Ontario Municipal Board and the decisions of the municipal councils charged with enforcement of this legislation were, to put it quite bluntly, all over the map in terms of the interpretation of this criterion.

I do not think that ought to be a surprise to any of us, since I think anyone in this room would be hard pressed to provide an absolutely clear definition of "does not adversely affect the supply of affordable rental housing in the municipality." What does that mean? It is not difficult to understand why the Ontario Municipal Board could not get its head around what that meant and why municipal councils had so much trouble with it.

We believe the solution is to get rid of the ambiguity altogether by getting rid of that criterion altogether, leaving two criteria in the end for applications. One of them, of course, would not be a criterion for applications in any real sense. The only real criterion for applications would be number 2, and that is where the housing is replaced. Then number 1 would be incorporated in the provision I spoke of earlier with respect to the Building Code Act and the Fire Marshals Act.

So our recommendation to you is to get rid of criterion 3 altogether, incorporate criterion 1 as I have suggested, and leave criterion 2 to be the substance of the application process under the legislation. In any case, put the criteria in the legislation. No matter what they are, we believe that people are entitled to look at the Rental Housing Protection Act, 1989, and know what the criteria for approval are.

I want to turn now to the whole question of exemptions from the legislation. This bill is notable not so much for what is in it as for what is not included in it. I want to touch very briefly on some of the things which are not included in it. First and foremost, I want to talk about the municipalities. There has been reference by the member for Oshawa to a secret

list which is in the possession of a parliamentary assistant and which I have a copy of here. I can confirm that it is not actually secret in that respect.

Mr Breaugh: It might be an old secret list.

Mr Melling: It may be an old secret list.

I can indicate that the following municipalities will be de-covered under the new legislation when they were covered under the previous legislation: Ajax, Barrie, Halton Hills, Kanata, Newmarket, Pickering, Richmond Hill and Whitby, all of which are in the environs of major urban areas undergoing a supply crisis in terms of rental housing. In addition, there is a whole series of other municipalities which are not in the ones I have just spoken to you about.

1740

So we support the proposal which was made by the Federation of Ottawa-Carleton Tenants' Association, and that is, rather than pick an arbitrary figure such as 25,000 or 50,000 in order to determine who comes under the coverage of the bill, would it not be far more sensible to cover all of the constituent municipalities in the regional municipalities with over 50,000 in population, which would include all of the municipalities to which I just referred to and in addition include the city of Vanier, which Dan McIntyre from the Federation of Ottawa-Carleton Tenants' Association has already spoken of as a concern from the perspective of Ottawa?

Second, I would like to address the exemptions for the number of units in the building. As the committee members are all aware, the bill will currently apply to buildings with five units or more. We are proposing that the bill apply to buildings with three units or more; in other words, that triplexes and fourplexes will be covered. As was indicated by one of the previous deputants, the social planning council research paper found that there was a significant net loss of affordable rental housing in triplexes and fourplexes over the period during which its study was conducted. Interestingly enough, there were more units lost as a result of conversions in triplexes and fourplexes than were lost as a result of the applications procedure under the old legislation. So we feel the inclusion of triplexes and fourplexes is quite important.

I want to touch now upon the whole question of condominiums and I want to do so by splitting the whole issue into two bits. First of all, there are registered condominiums. Second, there are buildings which have received draft approval or a commitment to exemption from draft approval. They are dealt with in different parts of the legislation. Registered condominiums are not covered in virtue of the definition of rental property which is in section 1. Draft approval condominiums are not covered by the legislation in virtue of two subsections which come later on in the legislation: those are 23(3) and 25(4). It says in our bill, I regret to say, 24(4), which is a typographical error, but it is actually 23(3) and 25(4).

Our recommendation is that those provisions—respectively, the definition of "rental property" and 23(3) and 25(4)—be amended to include draft-approval condominiums and registered condominiums, although we remind the committee that it would be entirely possible to include one or the other and not both. Our position is that you should include both in the legislation.



We see a couple of real concerns. First, registered condominiums and condominiums which have received draft approval are hidden from the people who live in them. That is our first concern. It comes as a surprise to people that they do not have the coverage because they are living in these buildings.

Second, the primary purpose of the legislation, I remind the members of the committee, is to protect the stock of affordable rental housing. These units, or most of them, are affordable rental housing. The fact that, largely for tax reasons and future investment purposes, they were registered as condominiums or their owners sought draft approval or an exemption from draft approval does not take away from the fact that they are rented out now. If it looks like a duck, walks like a duck and talks like a duck, it is a duck and you should treat it like a duck.

From the perspective of the people who live in those buildings, they do not understand why they are being left out of the legislation when the people across the road, whose landlord never took the tax advantage or the future options advantage that could be held in registering, are covered by the bill. We believe they should have the same protection.

I want to end up by making a brief comment about an issue which I expect will be raised by opponents of the bill, and that is this whole question of tenants buying their units. This is a very romantic notion and I will tell you where its origins are. I go to a lot of tenant meetings and at many of those tenants' meeting I have taken to conducting a straw poll. The question in the straw poll that I put is, "How many of you would like to be home owners one of these days?"

I would say that I get a response of 90 to 100 per cent at those meetings. Then I ask them, "How many of you could afford to buy a home now?" and I get a response of maybe three to five per cent, if I get any response at all.

The facts of tenants buying their own apartments are as follows and they are supported by the Social Planning Council of Metropolitan Toronto research study. The vast majority of tenants cannot afford to buy their units. Furthermore, those tenants who are asked if they would like to buy their units and if they support the conversion of their units to their own use grossly underestimate the costs of purchasing those units and the costs of paying the carrying of those units: the mortgage cost from month to month.

In fact the social planning council study found that only 19 per cent of people would support conversion to condominium of their own units. Interestingly enough, although not surprisingly, there was a strong correlation between income level and support for condominium conversion. Higher-income tenants were more than likely—31 per cent—in favour of converting to condominium, whereas lower- and moderate-income tenants were much less likely—that is, less than 19 per cent—to support it.

When you factor in the fact that most of them, as I say, grossly underestimate the cost of purchasing and the cost of carrying these units, I think it all adds up to one picture and the picture is as follows: It would be folly, as government policy, to introduce the whole idea of tenants buying their units. Most tenants cannot afford to do so; most tenants do not want to do so. Those are the facts as found in the social planning council's report.

I want to make one final point about this. If you would permit people to buy their units, you would wind up with a whole lot of buildings that are

mixed tenure: part condominium and part rental buildings. Our experience with those buildings is that they are an administrative nightmare because no one knows who is responsible for maintenance; there are fights about the costs of maintenance in the building. In other words, it is a recipe for discord.

Those are my remarks. I would be happy to entertain any questions.

The Chairman: Unfortunately, Mr Melling, when the bells ring, we are summoned to the House. We would like to ask you some questions, I am sure, but I think you have had virtually 20 minutes. We thank you for coming and presenting your perspective. The clerk will formally receive your petition and we certainly have the background information in your brief.

Ms Poole: Just briefly, since the federation has not had its full 20 minutes, and as a courtesy to allow it some question time, would it be possible tomorrow for it to come back for the first five to 10 minutes just to field questions? Would that be acceptable?

The Chairman: We are pretty tight on our timing tomorrow as well. In fact they did have 20 minutes. But I am in the hands of the committee.

Mr Harris: Why do not we allow them five minutes of questions? We have 10 minutes to respond to the bells.

The Chairman: Is it a 10-minute bell?

Mr Harris: I think it is.

The Chairman: Okay, we will take two or three questions now while the bells are ringing and then we will head off to the House. Who would like to start off?

Mr Harris: I will not go over my other question since I assume you do not think that is a problem. Let me ask you this. A number of groups have talked about their concern over which municipalities will be excluded and which will not. You have made proposals now to include a number. If a unit is a unit and a rental unit is a rental unit, why should not every unit in the province be covered? I do not understand why you are trying to draw these geographic lines.

Mr Melling: Contrary to public perceptions, I am both a pragmatist and a moderate on these issues. If one were merely concerned with being consistent, then I think one would say, "Yes, all units in the province should be covered." But I think one also has to be concerned with two other things. First and foremost, as I said, this is rental housing protection legislation, not primarily tenant protection legislation; therefore, it ought to be directed, in the view of the Federation of Metro Toronto Tenants' Associations, at those areas in the province which are experiencing an extreme dysfunction in the rental housing market.

In other words, our assumption is that it is largely going to be in regional municipalities with over 50,000 population where this should be targeted. Yet, as a matter of pure consistency, and if we could have our way, I would perhaps be coming before you and saying, "Cover every unit in the province." But that is not primarily where this legislation is needed; it is primarily needed in the areas that we have identified in our brief.

1750

Mr Breaugh: A quick piece of advice. By accident, coincidence or whatever, even though they have had three years to get ready for this thing, it looks like tomorrow, in about an hour, we are going to have to process this clause by clause--22 pages of amendments from the government side on Friday afternoon. It looks very much to me like this is a take-it-or-leave-it, last-ditch effort once again. What is your advice: take it or leave it?

Mr Melling: I had the opportunity to speak to the Minister of Housing about this very issue and she assured me that the purpose of these hearings was to give the bill a full airing, and if it was within the bounds of reality to be able to make amendments, if they were to improve the substance of the bill, I would urge upon the committee members to do their work over the next 24 hours, to satisfy themselves that this bill is okay in its current form and, if they agree with some of the concerns that have been raised today, to make the effort to make the changes.

If your question to me is that there are not going to be any changes, that is the way it goes, take it or leave it, then by all means, take it, because it is all we have. I suspect that if we did not take it, we would get much less after 30 June. I would say pass this legislation. We will deal with amendments if we have to at a later time, but I am urging you to consider the amendments that we have proposed, because they are very important.

Mr Breaugh: I think it should be pointed out that we are having full and public hearings even though the public has not been notified and there is a 20-minute time limit.

Mr J. B. Nixon: I just want to make a very quick point that we would like to extend an invitation to the other parties to consider extending the time of sitting tomorrow so that we might spend a little more time on this.

Mr Breaugh: Give me a break, Brad.

Mr Harris: Does the committee not sit on Thursday?

Mr J. B. Nixon: We have to get this back for 30 June.

The Chairman: If we sit Thursday, we cannot get it back into the House in time for the House to deal with it.

Mr Harris: What is magic about 30 June?

The Chairman: The present legislation expires on 30 June.

Mr Harris: Is this legislation not retroactive? The bill is.

Mr Breaugh: It is called great planning. That is what it is.

Mr Melling: Maybe I can explain that--

Ms Poole: In view of the time limitation, I will make my comments privately to Michael afterwards.

The Chairman: The committee stands adjourned until tomorrow.

The committee adjourned at 1753.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

RENTAL HOUSING PROTECTION ACT, 1989

TUESDAY 27 JUNE 1989





STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)  
VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)  
Allen, Richard (Hamilton West NDP)  
Beer, Charles (York North L)  
Carrothers, Douglas A. (Oakville South L)  
Cunningham, Dianne E. (London North PC)  
Daigeler, Hans (Nepean L)  
Jackson, Cameron (Burlington South PC)  
Johnston, Richard F. (Scarborough West NDP)  
Owen, Bruce (Simcoe Centre L)  
Poole, Dianne (Eglinton L)

Substitution:

Nixon, J. Bradford (York Mills L) for Mr Daigeler

Also taking part:

Breaugh, Michael J. (Oshawa NDP)  
Harris, Michael D. (Nipissing PC)

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service  
Fader, J. A., Deputy Senior Legislative Counsel

Witnesses:

From the Fair Rental Policy Organization of Ontario:  
Bassel, John, Chairman

From the Multiple Dwelling Standards Association:  
Schwartz, Jan, President  
Cornblum, Richard, Vice-President; Vice-President, Trivest Developments Corp

From the Ministry of Housing:  
Taylor, Susan, Co-ordinator, Rental Housing Protection Program  
Laverty, Patrick, Director, Rent Review Policy Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, 27 June 1989

The committee met at 1534 in room 151.

RENTAL HOUSING PROTECTION ACT, 1989  
(continued)

Consideration of Bill 211, An Act to revise the Rental Housing Protection Act, 1986.

The Chairman: Before we get to our two delegations that we are going to hear from this afternoon, I just want to mention a couple of agenda items. We will have to fill in the people who are not yet here.

Thursday's meeting which was scheduled in the notice will have to be cancelled, because one of the Health critics is unable to be there and there has been all-party agreement to cancel Thursday's schedule. We were to have heard from the Ministry of Health on Bill 147 and it does now look as if we will not be dealing with Bill 147 until the recess.

However, I would suggest since the steering committee gave direction other than that, it might be useful for the steering committee to get together on Thursday to discuss that matter as well as the agenda for the other two bills which have been referred to this committee, namely, Bills 30 and 31, and to discuss the number of weeks that we should be submitting to the House leaders for intersession meetings.

Mr J. B. Nixon: Before we begin, I want to correct the record. At our session last Tuesday, the member for Burlington South (Mr Jackson) had asked about the application of the general maintenance standard bylaw to be promulgated by the maintenance standards board under Bill 51, and I believe he was advised that it had been sent to the various municipalities where it would apply. I just wanted to correct the record and say that my understanding is that it will be sent in the very near future. It has not been sent yet.

Mr Jackson: The municipalities have not been advised. That is the point of something that you may have implemented by regulation earlier this year.

Mr J. B. Nixon: I am not aware that it has been implemented by regulation yet, but it will be sent in the very near future.

Mr Jackson: Finally, on that correction, could the Housing critics be issued a copy of that letter as soon as it comes out, and myself as well?

Mr J. B. Nixon: I will have that done.

The Chairman: I did not know that your question was on Bill 211. I just wanted to clarify before we move on to the consideration of Bill 211, is there agreement that we will have a subcommittee meeting on Thursday to discuss future business of the committee? Okay.

We will begin then with the schedule for the afternoon. Our first presentation is from the Fair Rental Policy Organization of Ontario and I will

ask John Bassel to come forward. You have about 20 minutes for your presentation and members of the committee would appreciate if you would leave some time for questions. Would you introduce the other members?

#### FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

Mr Bassel: My name is John Bassel and I am the chairman of the Fair Rental Policy Organization of Ontario. With me on my far left is Carol Albert, who is a member of our Bill 11 and 211 subcommittee, and sitting beside me is Rob Herman, a director of the rental policy organization and chairman of the small property owners committee. On my right is Jonathan Krehm, who is a director and chairman of the Bill 11 committee.

Mr Chairman and members of this committee, on behalf of Ontario's apartment building owners, managers and investors, I thank the members of this committee for hearing our presentation today. At the Fair Rental Policy Organization we pride ourselves on taking a responsible approach to our customer, that is the tenants, to our businesses and to government. We continue to advocate for a better rental system that is fairer to all parties.

We come before you today with a great deal of respect. However, what we have to say is not pleasant. It is honest. It reflects deeply held convictions, but I repeat, it is not pleasant. What the Ontario government is about to do through the passage of this legislation is not in the public interest. It is not in the public interest because first, the legislation will impede the renovation and upgrading of Ontario's ageing apartment stock; second, because it denies affordable home ownership opportunities to many tenants; and third, because it will deter further private sector investment in rental housing.

Let me turn to our first point of contention—renovations. The vast majority of Ontario's apartments were built decades ago to standards which we consider today to be antiquated. From the standpoint of energy efficiency, current plumbing and wiring practices and the application of new building technology developed during the past years, these apartments are simply out of date.

1540

It has been estimated by the Ministry of Housing that Ontario's apartments require some \$10 billion worth of renovations to ensure they are brought up to today's standards.

Bill 211 hinders renovations through its provisions. As well, Bill 211 will now require municipal council approval for major renovations even when no one lives in the apartment. You are just making it tougher and tougher to protect the existing stock.

We believe that as good intentioned as those who designed this legislation perhaps are, they do not understand the apartment business. It is difficult to undertake a major renovation at any time but particularly inconvenient and much more time consuming and much more costly with a tenant in possession of the unit. Perhaps some members have had the experience of a home renovation and can reflect on their personal experience with the dust, dirt, disruption and danger of living in what is basically a construction site.

The last three years of history with the old legislation, Bill 11, has

proven that municipal interpretation has been narrow enough to effectively make the approval criteria a basic prohibition on major renovation. Even with tougher criteria, we end up at the same place: the beginning of slow decay. It is for these reasons that we say this bill will expedite urban decline. It is for these reasons that we say this bill is not in the public interest.

Some have raised the issue of the need for this kind of provision to protect tenants. We submit they are already protected from eviction by the Landlord and Tenant Act. As well, in terms of so-called luxury renovations, the limitation on that has been achieved through the Residential Rent Regulation Act which requires the landlord to make application for approval of costs incurred in a renovation.

Prior to the Residential Rent Regulation Act landlords could establish new market rents following substantial renovations. This is no longer the case. After spending the money, the landlord must apply to the ministry for approval of a rent increase. Such an application would likely generate an order a year and one half later and would set a rent level that is lower than the market rent that could have been charged prior to the Residential Rent Regulation Act.

The second reason we say this bill is not in the public interest is because it will deny many tenants affordable home ownership opportunities. If conversions were allowed under strictly controlled conditions where a majority favoured conversion; where protection were in place throughout the process for tenants and where those who chose to continue renting had security of tenure, then the law could work to the benefit of all.

Our industry has indicated that such opportunities would provide home ownership at well below current market rates. Indeed, I remind members of the committee that the Cadillac Fairview buildings were offered to tenants at average prices of \$90 per square foot on Jackes Avenue in 1986. That equates to \$50,000 to \$90,000 per unit. We all know what the price of alternative accommodation both new and used is in this city today.

Finally, this committee should be aware that at Fair Rental Policy Organization this spring, we conducted a survey of over 1,000 tenants in Metropolitan Toronto. Two thirds of tenants believed they should be allowed to convert their apartments to condominiums if a majority of the tenants in the building agree and if nonbuyers are allowed to stay as tenants indefinitely.

Not only are you acting against the wishes of landlords but also against the wishes of tenants. Home ownership at a low cost through conversion could have been designed in such a way as to ensure upgrades were made to buildings as part of the purchase process. It could have been a way to protect housing stock at the same time as offering affordable home ownership. It could have offered upgraded apartments to tenants who did not wish to buy. It would have provided through a conversion levy a badly needed source of funds for new housing in this province. No one would ever have been evicted as a result of conversions. However, it could have fulfilled the aspirations of many tenants for a more secure stake in the community by becoming owners.

The third reason we believe this bill is not in the public interest is because it strikes another blow to the rental housing supply. It is a blow because it strikes again at the heart of investor confidence. Ontario has become an inhospitable environment for rental housing. It started with the introduction of controls; it continued on through the roll-in of the post-1975 buildings, and now the Rental Housing Protection Act.



In this new bill, we note there is an aspect of criminalization being added to the landlord business in terms of harassment penalties. There are bad apples in every barrel, but the majority of the small and large businessmen who make up Ontario's landlord community frankly resent this provision. But we have come to expect little else from this government.

What is most disheartening, however, is the process of consultation that took place leading up to this particular legislation. The bill was originally to have sunsetted; then it was extended; then a protracted period of dialogue ensued.

Throughout that process—and I emphasize this point—we were encouraged to believe that a more balanced piece of legislation would be forthcoming. Certainly, we recognized it would err on the side of tenant protection at all times, but it could also allow for controlled conversions and the need to renovate our apartment stock and to provide new supply to boot. At least that is what we thought. We were misled, or we were led down the garden path only to face Bill 211, which, if anything, makes matters worse.

We were also led to believe that the Liberal caucus housing subcommittee had produced a report favourable to condo conversion with tenant protection. I do not know if that is so or not, but that is what we were led to believe.

Taken together, these facts led me to author an article which the Financial Post printed. In that article I said Ontario had sent a major signal to the investment community to be wary of the private rental sector. I could have said with equal conviction that Ontario is closed to the private sector rental business. Believe me, the investment community heard that message.

This regime in Ontario is moving in an opposite direction to most others in the world. I use that broad statement advisedly. We see the philosophy being encouraged of market forces entering behind the Iron Curtain. We see socialist regimes restructuring to accommodate individual initiative and private enterprise. In Ontario we see the reverse; more intrusion into the marketplace, more laws, more regulation, less room for initiative.

Of course, the hard issue that drives the need for this legislation is the rent review system itself and the fact that the private sector has been forced from active participation in building purely rental apartments. You know our position on this issue, and I will not bore you with it at this time, but I will say that continued adherence to this path is going to cost taxpayers more and more in the future.

This last budget saw significant increases in the budget of the Ministry of Housing. The Ontario government is obliged to pour millions into nonprofit and co-op programs because there is not an active private sector building rental accommodation. But the provincial government does not have enough money. It does not have deep enough pockets to adequately meet the housing needs of all Ontarians on its own. That, however, seems to be what it is attempting to do, at least in the rental sector. I caution that there are limits to taxpayers' patience and this last budget is testing those limits.

A final point that I want to touch upon is the one exclusion in the bill, that is, rental condominium units. These units have been purchased by thousands of individual investors across Ontario and in fact across Canada. If they were to be included, that source of supply would be eliminated overnight. No further rental condominium projects could be funded and thousands under construction, intended for the rental market, would simply go to home

ownership. I know whereof I speak because I am building some of those units.

That would be the final death blow for private sector apartment housing such as it exists in Ontario. Jobs would be lost, there would be bankruptcies, there would be foreclosures and individual investors would probably go down with the projects. At least somewhere in this government someone has understood that point, and while this bill goes a long way to smashing the rental sector, it stops short of damaging individual investors.

#### 1550

In conclusion, I recognize that some people in Ontario believe there should be no private apartments, that housing should be some sort of public trust, at least in the rental sector—perhaps some day in the single family home sector, too—and that co-operatives are the only wave of the future. To them I say simply that they do not understand the basic Ontarian's desire for home ownership, for the security that brings, for the stake in the community that engenders, and for the richness that in turn contributes to our society. They do not understand, yet they prevail in driving the government, which the majority of the population felt was reform-minded and middle-of-the-road, to a left-wing and interventionist agenda.

To those of you of the governing party who are here today, I respectfully ask that you reconsider where you are going, not just with this legislation but with your housing policies as a whole. Please reconsider the direction you are taking this great province in. There is little flexibility left in industry to take this continual buffeting. Please reconsider and somehow bring back policies which have room for the private sector to play a real role again.

I have left three submissions with the committee. One is an address that was intended to be given by Rob Herman, who is with us; because of time constraints, I request that you read it. The other two documents are the two submissions that the Fair Rental Policy Organization of Ontario made to the Ministry of Housing at the time this bill was under review. We respectfully request that this committee look at those submissions and try to understand the rationale of where we are coming from and the fact that we, as the Fair Rental Policy Organization, are attempting to take reasonable positions with regard to rental housing.

In closing, I would just like to reiterate the missed opportunities: the missed opportunity to upgrade the existing stock and extend its life; the missed opportunity for home ownership at reasonable cost to many who have no other opportunity for home ownership; the missed opportunity to encourage investment by the private sector; and the missed opportunity to show that sunset legislation means what it says.

Mr Jackson: Mr Chairman, with your indulgence and that of the deputant, may I pursue the question Mr Bassel raised with respect to a housing subcommittee in the Liberal caucus? Mr Bassel raised that question. I wonder if the parliamentary assistant—

The Chairman: The questions should be directed to the delegation, should they not?

Mr Jackson: I asked the chair's indulgence and the deputant's, if I might raise the question.

The Chairman: Do you have any objection to Mr Jackson using some of your time to direct the question to the parliamentary assistant?

Mr Bassel: I would like to know the answer myself.

Mr Jackson: That was my assumption.

First, does a housing subcommittee exist? Did it review this legislation and what was its recommendation?

Mr J. B. Nixon: My answer is, I expect, the same answer you would give, Mr Jackson: Anything that may or may not be discussed in caucus, any suggestions about what may be discussed in caucus, are not revealed outside of caucus. Whether or not something occurred is not something I would discuss with you.

Mr Breaugh: Do you wear white hoods?

Mr J. B. Nixon: Tell me, does your caucus meet with white hoods?

Mr Breaugh: They certainly do. White hoods, black hoods, red hoods—

Ms Poole: Are you saying you are a bunch of hoods?

Mr Breaugh: We admit it freely. We do not depend on the Toronto Star to reveal that.

The Chairman: Did you have a question for the delegation?

Mr Jackson: Yes, I did. I appreciate very much your emphasis on the two real issues here, that of protecting a tenant's ability to pay for an apartment, which is a separate and distinct question or social need from that of ensuring that the available stock of older housing is retained and protected. Unfortunately, this committee has not received a considerable amount of attention on that critical issue.

I know urban planners have been talking for at least two decades about the importance of retaining older housing in older neighbourhoods, because we do not want the situation that exists—we see it on TV all the time—in parts of Chicago, Detroit, New York, the older cities, where housing is allowed to degenerate, partially in response to those jurisdictions having implemented legislation similar to this.

Are you satisfied in your discussions with ministry people that they understand the distinction between protecting housing from degenerating to a point where it cannot be repaired, and where these restrictions are put in place in order to save an actual building so it does not decay to a point where it cannot be saved?

Mr Bassel: I believe ministry staff we have spoken with are quite aware of this. I am not quite sure the message has got through to the people who are actually making the legislative decisions.

Mr Jackson: That is the concern I have. The previous government commissioned a review of the general issue of the loss of affordable housing and the loss of rental housing in this province. I think it was commissioned in 1983 or 1984, and it reported in 1985. The name of it escapes me. I hope to have that so I can bring it to the committee's attention. The report

specifically said that the Bill 11 and Bill 211 type of actions actually mitigate the retention of older properties.

I was pleased that in Robert Herman's presentation, he uses an example of how a building eventually, because of this catch-22, will be caught. In Hamilton, where I have a background and understanding of the rental market, we saw several buildings go that route for that reason.

Here we have government civil servants, the best experts in the field, an independent review, telling both governments that this kind of legislation will work against the saving and retaining of older buildings. In your opinion, is it the fact that the politicians refuse to look at the retention arguments of saving these buildings; but within the ministry, however, there may be some conflict, that they understand this is having a negative effect but cannot get past the decision-makers or policy-makers within the government?

Mr Bassel: I think you have expressed it extremely well. That is the message. The message is that other considerations are outweighing the realities of the situation.

Mr Jackson: My final question: Is anybody aware of what is the next generation, the next phase of this kind of legislation, which is about five or six years away, in terms of the degenerative effects of these buildings and its impact on displacement of tenants and a variety of other things?

Several jurisdictions around the world have gone this route, and it seems to me that we cannot learn from their experiences. There are many jurisdictions in Europe and even in North America that, in order to retain their older rental housing stock, are proceeding very cautiously but definitely not in the same direction as this bill goes.

Mr Bassel: I think four or five years from now you are going to see one of two things happen. Either somebody is going to be bright enough to say: "My God, what a terrible mistake we made five years ago. We're further down the road, but there may still be time to correct it," or you will see the thing drive forward and we will just let it happen.

The Chairman: We are about at the 20-minute mark. Mr. Harris, do you have some questions?

Mr Harris: I wonder if you could tell us if the Ministry of Housing sent you a copy of the amendments it is proposing for this bill.

Mr Bassel: Yes, we got that.

Mr Harris: When did you get those?

Mr Bassel: Yesterday.

Mr Harris: Were those the ones I sent you or did you get them from the Ministry of Housing?

Mr Bassel: I am not certain, frankly. They went to our Fair Rental office, I assume. I am sorry; they were sent by your office.

Mr Harris: Have you had a chance to look at the amendments?

Mr Bassel: No, we have not.



The Chairman: Thank you very much for coming before the committee and sharing your perspective on this important matter.

Mr Bassel: Thank you very much.

1600

The Chairman: The next delegation wishing to appear before the committee is the Multiple Dwelling Standards Association. According to my agenda, it says Jan Schwartz and Richard Cornblum.

Mr Schwartz: That is correct.

The Chairman: Who is making the presentation?

Mr Schwartz: Both.

#### MULTIPLE DWELLING STANDARDS ASSOCIATION

Mr Schwartz: My name is Jan Schwartz. I am the president of the Multiple Dwelling Standards Association, and my colleague Richard Cornblum is the vice-president.

I will say just a few words for those members who perhaps are not familiar with our organization. It is the oldest province-wide organization of residential rental property owners who are not builders or developers. Ninety-five per cent of our membership purchases its buildings. They invested in a building which has already been built. Many of our members are smaller landlords who have only one building. Some of them have more than one. They come from different walks of life. Some are full-time landlords; others are just part-time landlords.

The legislation that was introduced in the last decade especially has hurt them much more than some of the larger corporations, which were better equipped to deal with the realities. I am talking about the Landlord and Tenant Act, where a nonpaying tenant can put the landlord out of business, because the landlord has to go through the courts to get the tenant out. It is a big hassle for them.

With the rent review act, of course, many of these landlords were caught with low rents and are still way below the market level. Certain parts of the rent review act were never proclaimed. I am referring to the chronically depressed rents. The same people who were hurt by the Landlord and Tenant Act and the rent review act are now being hurt by this latest bill, son of Bill 11, Bill 211.

As Richard Cornblum, his father and their company, have been very active in rehabilitating older stock, I think I will ask Richard to make the presentation which he has written. You have copies of it.

Mr Cornblum: If the government legally ordered me to drive a 1940 Pontiac for the rest of my life and in addition passed a law forbidding me ever to take it off the road long enough to repair it, those actions would be labelled absurd.

Yet your proposed Bill 211, legislation with regard to housing stock, is much the same. It assumes that old buildings will never age and never need major repairs. It suggests that a 1940 building will perform as well as a

building constructed 30 years later. It ignores all of the technological improvements to mechanical systems that have evolved over the past decades, and it dooms older apartment buildings to obsolescence, decay and outright risk from built-in fire hazards. How can you enact legislation that guarantees that all buildings constructed prior to 1950 will become dangerous slum tenements within 10 or 20 years?

I am a landlord who renovates, because I want to keep my buildings up to proper standards. Over the past 10 years, I have renovated 700 units, 500 with vacant possession and 200 with tenants in place. I can tell you that it is quite possible, with tenants in place, to renovate buildings that have been built within the past 30 years. The wiring and mechanical systems are not beyond saving, and by using ingenuity and extremely careful co-ordination of trades, it is possible to upgrade a unit to modern specifications. But when the building was built longer 35 than years ago, it is impossible to make it safe and functional without vacant possession. My company proved that fact in a court of law under the old legislation.

It is essential for the future of Ontario housing stock that you understand this basic, unavoidable fact. In order to replace plumbing and electrical systems in older buildings, it is absolutely necessary to remove all bathrooms and kitchens completely. They must be out for six or seven months until the new mechanical systems are completely installed. There is no reasonable alternative to this method.

It is also essential that you fully understand the exact conditions prevalent in these older buildings. The lifespan of the plumbing in any building is a maximum of 50 years. After that time, it cannot be repaired; it must be totally replaced. Modern copper pipes cannot be patched to galvanized pipes of the era. It only accelerates the rate of deterioration. Waste pipes scale up solidly until flushing a toilet can cause the flushed material to flood kitchen sinks in apartments on floors below. Nothing can be done to stop it.

Do you have any conception of how apartment buildings were wired in 1925 or 1930? There are bare wires in those walls—wires that were installed before insulated wires were invented, wires that were installed before apartments had refrigerators. To this icebox era system, today's tenants are connecting large assortments of modern appliances. We are not permitted to remedy the situation. Buildings erected between 1930 and the 1950s have four electrical branch circuits, where today a minimum of 16 is required. Overloading of those circuits has long since burnt off the insulation.

By denying vacant possession, even to correct the dangerous and undesirable conditions I have just described, Bill 211 displays a fear that landlords will evict tenants, create luxury renovations and charge higher rents. But Bill 51 has already eliminated all incentives for luxury renovations. Under Bill 51, rents are increased on a cost pass-through basis, regardless of how extensive they are. The landlord can no longer oust a tenant and create a rental unit that can be assigned whatever rent the market will bear. There is absolutely no advantage to be gained by the landlord, financially, from changing tenants. Applying for vacant possession, therefore, would be a matter of necessity only and it should be permitted in the case of older buildings.

Renovating a building which has been built within the past 35 years, with tenants in place, is practical. It is difficult and far more expensive, but that is partly offset by the fact that tenants continue to pay rent

throughout the renovation period. But without vacant possession, it is impossible to restore a building that has seen four decades or more of use. The proposed Bill 211 guarantees the total deterioration of Ontario's housing stock by denying access to the mechanical systems through a period of vacancy.

It is impractical to suggest that landlords apply to city council. There is no council in Ontario that will risk losing votes by allowing vacant possession. When 50 screaming tenants show up to dispute, there is not a politician alive who will find against them, whatever the evidence of necessity for possession.

Take the case of a building in the Beach area of Toronto, which was known as the Leaning Tower of the Beach. It was falling over and was condemned as unsafe by the city inspector. In response to demands by the tenants, in spite of the fact that their lives were actually in danger, council tried to revoke the demolition permit and the landlord had to resort to the courts for permission to demolish his death-trap. Council would rather risk the loss of the tenants' lives than the loss of their votes.

Bill 211 states that if a single unit becomes vacant, an application to council must be made before that single unit can be renovated. Even if the unit has stood vacant for a year because no one would live in such a decrepit hole, the landlord is still denied the right to restore it to decency. Even if he were sure to win in the end, what landlord could stand the costs of going through council and then appealing to the Ontario Municipal Board for permission to repair one single apartment?

I strongly urge that there be different laws for buildings that were constructed more than 35 years ago. The kinds of renovations to make the mechanical systems which are required to keep those buildings habitable and to significantly extend their useful lives cannot be done without vacant possession. Unless some attention is paid to this fact, the consequences to a significant portion of Ontario's housing stock will be disastrous.

Four brick walls standing as a residence do not make a decent home. There must be windows that shut, furnaces that heat, toilets that flush and wiring that functions safely. Without these things, a house is not a home, it is a slum and a disgrace to the province that created it.

Mr Schwartz: I would like to make a few concluding remarks. The combination of the three rental housing bills---this bill and the other two bills, the rent review bill and the Landlord and Tenant Act---have proven such a burden to many landlords, especially the smaller ones, that they are withholding units from the market. A recent survey in the city of Toronto has indicated that 5,700 units which used to be rented are now vacant; and these are only the ones that declared themselves as such. Therefore, the point I am making is that this kind of restrictive legislation will lead to a loss of more and more rental units. This particular bill should be renamed the Rental Housing Coercion Act rather than the Rental Housing Protection Act.

1610

The Chairman: Thank you for your presentation; it has certainly been forthright. Questions to the delegation?

Mr Breaugh: I probably do not have a great deal of agreement with

much of what you have said here, but there are a couple of things that I do find—

Interjection.

Mr Breaugh: Well, I hope everybody drives a new General Motors product; never mind the Ladas.

Some of the things you brought up interest me, particularly having to do with the type of wiring in a building and things of that nature. Would it be conceivable that a better solution could be found? In other words, is it technically possible to identify a building by means of its wiring or its plumbing and set out a set of circumstances that would allow proper repairs to be done there?

Mr Cornblum: The problem is, how do you live in a building that does not have an electrical system? If you have to totally replace the system that is in existence in the building, what do the tenants do while you are replacing the system?

Of course, there are also the dangers you have to the people working there. If they are replacing the system with a new one and the old one is still active, the workmen and the tenants could be electrocuted. When we do a renovation to a building and change the electrical system, all of the power is totally disconnected at the source. There is no power in the building and we use temporary services in the hallways so that nobody will accidentally electrocute himself. What you are trying to do is force people to live on a construction job. It is just not safe and it is quite impractical.

Mr Breaugh: Okay, but to take a second shot at it, is it possible to identify, by means of the type of wiring or plumbing that is used in the building, where it is not possible or practical to have people continue to live there?

Mr Cornblum: Yes.

Mr Breaugh: How would you do that?

Mr Cornblum: By the type of wiring; basically, as a rule of thumb, by the age of the building and that is my suggestion—

Mr Breaugh: Would you go, for example, through something like a city building inspector process? One of the amendments in the bill that is currently before us uses the words "structurally unsound."

Mr Cornblum: That is a problem. When you say structure, a building may be structurally sound, the bricks and mortar, but what is—

Mr Breaugh: Okay. Let me try to short-circuit this just a bit. I am not really interested in having some landlord come up to me and say, "This building was built in 1925 and I think the wires are all screwy and everybody has to get out." I would be prepared to listen to an argument from someone with perhaps a little more neutrality involved who said: "This building needs to be renovated now for safety reasons. Here is why we know that. Here are a little data that indicate to me as a member of this council that people cannot live in this house while we are doing that."



But I hope you appreciate the fact that we are not about to sit around like a bunch of nanas and listen to some landlord come in and say, "Everybody's out on the street because I have to renovate and this is why I want to renovate, and we will put them in 57 housing units we have just discovered here while I do these renovations." There has to be some little fairer way to do that. Is there any way you know of?

Mr Cornblum: Any engineer who is familiar with that type of building will give you that report. Whether it is a city inspector or a private consultant, he would basically be able to say what type of building it is. But I would like to point out that they built the buildings generally in the same way. No one discovered America and did it differently 10 years or 20 years sooner than someone else did. So you could walk in off the street and without examining the wiring, before you even look at the wiring, probably in 95 per cent of the cases you can tell what kind of wiring it is before you even look, just by knowing the date the building was built.

Mr Breaugh: For example, as to the building you are in now, this old place was built well before the time period you discussed and we are looking at renovations now, but we do not actually make our decisions based on somebody walking around and saying: "This is a pretty old building. You had better kick everybody out and rip it all apart and do the renovations." We have to have a little evidence that there is a problem here, how we would resolve that problem, and then we simply plan how we would do the renovations around that.

Mr Cornblum: I am sure this building has been renovated several times over its lifespan.

Mr Breaugh: Let me show you some places that have not been renovated at all since they were put up.

Mr Cornblum: Obviously, if you walk into the building and it is in its original condition and it is 40 or 50 years old, you know you are going to have a problem.

Mr Jackson: We have two tenants in that building.

The Chairman: Could I just follow up on that. I think what Mr Breaugh is getting at is, is there some objective that we could put in that everyone would recognize?

Mr Cornblum: It is very difficult. An engineer will basically look at the building and say that the plumbing is—how badly scaled up does the plumbing have to be? How old do the pipes have to be? Do you say we flush the toilet so many times and see how long it takes to drain? I do not know how you would make it a totally objective test.

Mr Jackson: I am pleased that you have sort of addressed this issue of the age of the building. I have a bit of background in renovating older buildings and retaining them for rental stock, because I believe it is a very worthwhile enterprise and activity.

However, I guess I am a little concerned that, for example, if I can go back to your reference to our renovating this building, some years back they found out that asbestos was really a bad thing to have in buildings and the New Democratic Party, with all its worker sensitivity—worker safety and hazards of the workplace and so on—really insisted that whole section of the

north wing be vacated and that the construction people come in and tear it all out.

I guess it strikes me as odd that on the one hand you have, I guess in the case of the NDP, this concern for the safety of an individual in an environment where he works, but they do not have the same standard when it comes to the environment where he sleeps.

I guess what concerns me about this bill is this catch-22. I understand the ideological approach to this issue, but for my instance, my wife and two children and I just moved into a new home and I made sure I had all the wall boarding done, finished, because of an infant baby and the risks with gypsum.

These are the kinds of issues, once you have established that the work has to be done. That could be done by any number of means, whether it is the building department telling you your place is unsafe or whether two estimates have come in to indicate that not to address the repairs might put the building at risk of being condemned. Those are fairly easy things to come to conclusions about when you are getting estimates or prices for the work to be done.

Does it not strike you as a bit of a contradiction that on the one hand we have a sensitivity for people in their workplaces, but we do not have a sensitivity for their safety where they sleep at night?

Mr Cornblum: When I do a renovation, a major job, obviously we have safety inspectors as well as building inspectors and plumbing and electrical inspectors. If my men are not wearing their hard hats and their safety boots, they get a \$75 fine and I get a \$500 fine. The tenant living there, of course, walking around in his pyjamas and slippers, does not get any fine at all. He is also at risk, but that is all right because he has the right to stay there under any circumstances.

Mr Jackson: I wish a few more politicians would take responsibility for some of the decisions we make in terms of this kind of catch-22 legislation, because I just think this is poorly thought out. The net effect in many instances is going to allow housing stock to degenerate to a point where it is taken off the market or it moves into a high-risk-for-accommodation category. Both are unacceptable in terms of an affordable housing policy for this province.

I commend you for your brief and the clarity with which you presented it. I just wish the government, with its big majority, had sufficient amendments that included some of your concerns, other than the concerns it seems to express in an entirely different direction.

The Chairman: Any other questions?

Mr J. B. Nixon: I would just like to note that Mr Harris and I will have the opportunity of debating these issues tomorrow night at the annual meeting of the Multiple Dwelling Standards Association.

Mr Harris: I am looking forward to it.

Mr J. B. Nixon: I am sure you are.

1620

The Chairman: Thank you very much for taking the time to prepare your brief and come before the committee and share your understanding, based on experience.

Mr Schwartz: Thank you for inviting us to appear here today.

The Chairman: Members of the committee, before we proceed to the scheduled clause-by-clause, I would like to draw to your attention that our researcher for the committee, Alison Drummond, has done an excellent job in summarizing and I would like to commend her because the time frame was quite tight. She not only looked at all the oral briefs we have heard but all the written briefs that have been submitted to this committee. There is an excellent summary of all concerns raised and all recommendations, section by section. Congratulations. Members of the committee have that in front of them as a guide to remind us of all the presentations that have been before us.

Before we move to clause-by-clause, are there any questions anyone would like to address to Alison on her report; that is, the summary of recommendations? Alison, do you have some comments?

Ms Drummond: Perhaps I could just point out to members that these do not include everything you have heard today, obviously. It is only what I had as of yesterday evening.

Mr J. B. Nixon: Before we begin clause-by-clause review, with the committee's indulgence I would like to ask permission for members of the ministry staff to come forward to the table.

The Chairman: I do not think there could be any objection to that. The parliamentary assistant would like the ministry staff to come to sit up in the committee chairs. I think it is customary to have them nearby. Would you like to introduce the people with you, Mr Nixon?

Mr J. B. Nixon: Certainly.

Mr Breaugh: Just before you start, I have had handed to me from the Coalition for the Protection of Rental Housing an amendment it would like the committee to consider, and I think there are probably some other groups. I know this is perhaps a little unusual, but would the committee take any upset at the fact of simply tabling this amendment for consideration by members of the committee?

The Chairman: Circulate it?

Mr Breaugh: Yes.

The Chairman: No problem.

Mr Breaugh: Basically, it just formalizes some comments they made yesterday.

Mr Harris: I also have a motion I would like to move.

The Chairman: Could I get Mr Nixon to introduce the staff people first.

Mr J. B. Nixon: I have the honour of introducing Patrick Laverty, who is well known to you. He is the director of the rent review policy branch—I am not going to get the titles right—Susan Taylor and Christina Sokulsky.

The Chairman: Mr Harris has indicated he has a resolution to present. I will have to hear the resolution.

Mr Harris: I will pass it on to you now, Mr Chairman.

The Chairman: Mr Harris moves that in view of the fact that there are amendments that have not been circulated prior to the hearings, and a considerable number of valid concerns raised by the deputations to this committee, the committee recommends that Bill 211 be put on hold for 6 months to give the ministry time to consult more widely and correct the flaws in Bill 211 and that the act to revise the Rental Housing Protection Act, 1986 be extended to 31 December 1989.

The Chairman: Could you give us a minute.

From my consultation with the clerk, it is a procedural motion which is in effect a motion to defer and I would rule that it is in order for the committee to consider it. I am not sure about debate. I guess debate would be on the timing of the deferral. Mr Harris, would you like to start off? Focus your comments on the timing aspect, not the merits of the bill.

Mr Harris: Yes, certainly. I will not take a considerable amount of time to debate it. I do not feel, and I have tabled this motion that a number of deputations also do not feel, that consultations have been nearly extensive enough. I think they feel and have pointed out, and I concur, that there are a number of things in this bill that will not achieve what it is intended to achieve. Defer the finalization of this bill rather than rush it through. Bringing in amendments at the last minute, with a number of the deputations not able to see the amendments and being really under the gun, if you like, with a time line, I find most unattractive and unappealing.

I suggest that by passing this motion we can go back to the House. Should this motion carry, I expect full co-operation, I am sure, of the House leaders of the various parties to facilitate the extension of the existing bill since we have been told that like it or not, time for debate or not, time for consultation or not, this has to be passed by the end of June or there will be a gap in what the government intends to provide in the way of protection or so-called protection.

I disagree with the government's rationale on that as well. However, having said that, I understand the government's intention and I do not want to be thwarting, if you like, its intention to continue on with bad legislation. Indeed, that is their right, as the majority, to do so.

This would extend the existing bill, leave those protections or perceived protections that are in the existing bill there and allow for a far more logical look at this particular piece of legislation without a gun to anybody's head as to timing. So I would encourage members of the committee, in the interests of making sure that the legislation we end up with is indeed good and fair legislation, to support the resolution.

The Chairman: In rereading the motion, I just want to clarify the last part of the operative clause, that "the committee recommends that," and



then there is an "and that." I assume the word "recommends" should refer as well to that final clause.

Mr Harris: Absolutely. I am recommending that the committee recommend two things: (1) that this bill not be proceeded with at this particular time under these circumstances, and (2) that this recommendation would be to the House, that it extend the existing bill and do so before the end of June.

Mr Breaugh: I have a little bit of sympathy for what Mr Harris is proposing here. This is kind of an unusual process. It is the first time in my experience here that we have had a public hearing where the public was not invited, where we did not give notice, when there was not an opportunity granted for all of those who wanted to appear to appear in some form.

It has become fashionable lately that witnesses appearing before a committee are given a time allocation. That is a relatively new experience and it is one I frankly dislike because it puts an obligation on the people who are on delegations before a legislative committee that is not on any member of the committee. I think that is unfair. It means that even though there are often occasions when you would like to have a little discussion with groups that appear before a committee, the 20 minutes, which is some magical number coming out of somewhere, run out and they are gone.

The process is unusual. It is unusual that the government has had basically three years or more to get ready for this process and we wind up, three days before the current legislation expires, looking at a raft of amendments. We are faced with the position this afternoon of a host of amendments proposed by the government to its own bill that we as members of the assembly saw for the first time 23 June, seven days before the bill expires. This is one hell of a way to run a railroad, folks.

1630

I want to balance this a little bit. To be fair to the government, I do not think this government is going to change its mind about anything. So I am not really interested in a long argument about amendments that somebody wants to put in. It seems to me you have made your intentions known and you have also made it fairly clear that there are not going to be many amendments.

I have no illusions that we are here to listen to what people have to say, to put forward amendments or suggestions that they make to the bill. The government has made its decisions already. They are not about to share with us, quite normally, the decisions on how they came to those decisions in their internal caucus decisions or in their cabinet arguments, and that is reasonable.

I think I would have had a lot more sympathy for this motion if it had been introduced at the beginning of the proceedings. That is my problem with it. I am uncomfortable and I want that on the record. I think there are a lot of things in this bill that are going to come nowhere near to meeting the expectations of the people who are advocates of the bill; not at all. But I am caught in one of those positions where I am probably going to have to wait a year or so for the same people who are urging me to vote for this bill today to come back to my office and tell me: "It didn't happen that way. It didn't happen the way I thought it was supposed to. The wording in the bill didn't get interpreted the way we all thought it should have been interpreted. It didn't have the effect that we thought it would have."

I have been around just long enough to know there are times when there is nothing I can do of a positive nature to change the course of legislation. You have to kind of let some of these things happen and a little later on people will see what you were talking about. So I am prepared to proceed with the bill in an unusual way, for me anyway. I know that for most of what I want to be accomplished, normally I would have prepared—in fact, I do have them—a long series of amendments with wording changes, deletions to this, substitution of words to that and little changes of definitions here, there and all over. We would have gone through the normal legislative process.

I went through them last night and I know that most of what I want to accomplish in terms of putting my party's position on the record—I have already had a chance to do—I can do again as we go through it clause by clause by speaking against certain sections, trying the parliamentary assistant on for size and doing a couple of other things. We have already had one amendment proposed to us by a group today. I am prepared to do that.

I really regret this because the motion that Mr Harris puts is not an unreasonable one under normal circumstances. Had he put it initially, I would have had a lot more fervour for it. But to give you the other side of the argument, I guess, he puts forward a motion today which might get reported tomorrow. It might get discussed on Thursday and it might get passed next week. That is just long enough for some idiot landlord out there to demolish a building because there is no law in place. That is quite a risk to run. It is a risk I am not prepared to take.

I wish that what I was saying were fantasy. I wish that there were not landlords who would go out and demolish a building over the weekend, but I am aware that in Kingston last year, in the middle of the night, despite an order by the city council, that is exactly what one Toronto landlord did to an historic building. He moved the bulldozers in at midnight and demolished the building overnight. The next day the council was trying to figure it out: "What do we do now? The building is gone."

We are weighing our risk. I want to reiterate that I am uncomfortable with the position we are in. I think it is unfortunate, but I do know that there will be another day. I may even be here to do something about it. So I am prepared to do that and I will not support the motion.

The Chairman: I thank the two speakers for confining their comments to the question of the timing.

I would like to draw to the committee's attention that the clerk has informed me that Mr Harris is not an officially substituted member. However, Mr Jackson has agreed to allow the motion to stand in his name. I do not see any problem with that.

Mr J. B. Nixon: I would like to speak briefly to the motion. I am certainly opposing this motion.

Let me recount some history for the committee. First, well over a year ago, the minister and the ministry issued a paper called Rental Housing Protection Act: Future Directions. Consultation was invited, many briefs were received, many meetings were held with all of the groups which have appeared before us and many others on many occasions. There was extensive and full consultation.

Not everyone is happy with the outcome because, as you are well aware,

in a democracy there are divergent interests and divergent points of view. None the less, there was extensive consultation.

The ministry fully intended that this bill be introduced in time to have passage and proclamation prior to 30 June so that it could be in effect and indeed there would be no hiatus between the old bill, sunsetted for 30 June, and any new bill. Mr Breaugh has pointed out some of the problems.

Another problem I would just quickly mention is that there is nothing during that hiatus period to prevent a landlord from bringing, issuing and serving notices of eviction. It may be that we could draft legislation that would say those notices of eviction are invalid, but the problem we would have then would be informing every court and every tenant and every landlord, who may be acting under the completely innocent belief that what he or she was doing was valid, that they are invalid. Frankly, it does not seem to me like good public policy to act in that type of manner.

Similarly, to deal with the matter in the way that Mr Harris suggests leaves open a number of problems. The ministry is fighting legal battles or assisting in legal battles dealing with vacant buildings. Mr Harris has not addressed the issue of vacant buildings. He is certainly aware of the issue of vacant buildings, but he has not addressed it and his proposal would not deal with it. A number of legal battles would ensue, and I do not think it would be good public policy, particularly when we know what we want to do. I think all three parties support that; maybe not.

In any event, coming up to where we are today, an offer to brief members of the opposition was extended by myself personally at a time that was convenient to them. Mr Harris's party sent two members of its staff to that briefing and they were informed generally as to where we were going, what we were doing and asked if they wanted questions answered. I left assuming they were generally satisfied. Mr Harris did not attend.

On this Tuesday past, on the first day of committee hearings, we put before the committee an extensive paper outlining the substance of all the proposed amendments. I undertook to have before the critics in both opposition parties the legal, drafted amendments that would be put before the committee by last Friday, well in advance of clause-by-clause review today. Mr Harris was not here during the course of the review of the substance of those amendments. I do not fault him for that, that is his choice, but it is not as if they came out of the blue today.

Finally, Mr Breaugh used the phrase that the government is running a railroad, and he may or may not like the way it is run. I suggest to you that this is a democracy and we all participate to a greater or lesser extent in running the railroad. The decision to put this bill before this committee at this time and for this period was not a decision taken in isolation. To try to pin that on us is just ridiculous.

The ordering of the House's business is done by the House leaders. I do not fault them. There has been a lot of work to do; there have been a lot of things going on in the House that different people have chosen to initiate for different reasons. In any event, we all participate in running the railroad and that is how we got here today.

I suggest to you that it is in the interests of landlords and tenants to have certainty, whether they like the law or not. I suggest to you that it is the government's view that this is good public policy and it should be proceeded with. I urge everyone to defeat the resolution.

Ms Poole: I too would like to speak in opposition to the motion. The reason I will do so is the urgency of this bill. It should be passed and it should be passed now. First, it provides protection for our rental housing stock, and certainly tenant groups will be the first to say that it is a very large improvement over the old legislation. Second, it provides protection for tenants themselves, whether you are looking at the fact that vacant buildings are brought in or that there are very strict enforcement mechanisms for the first time, such as the harassment penalties, such as the restraining orders, such as the fact that for the first time a building can be returned to rental stock. All these enforcement mechanisms are very important to tenants.

1640

I would also like to reiterate the parliamentary assistant's point that the decision to hold these hearings at this time and the urgency are not a matter of only the government making that decision. This was a priority bill for the government. You will see that it had first reading on 31 January, and if it had been the government's way, it would have been passed long before now. As the opposition members are well aware, the decision to bring bills to a committee is a threefold one, and the opposition House leaders have significant input into that.

I do urge the committee to vote against Mr Harris's motion—or I guess I should say Mr Jackson's motion, since Mr Harris is not actually a member of the committee—and get on with passing this very important legislation.

Mrs Cunningham: I am going to speak as a fairly new member to this process, within the last year. Although I was elected municipally for some 15 years, I do not think I have been part of the democratic process anywhere at any time where I have looked at a process that serves the public in a less effective way.

I cannot imagine the people who have come down to make presentations, who have been following the progress of this particular bill, being faced with some 22 amendments last Friday. Most of them know that I think family life is important and it would have been almost physically impossible for them to look at it.

We represent the public, and I just do not buy the fact that the government is not able at this point in time to allow for more perusal of these recommendations. The fact of the matter is this 30 June date has been one that has been known for a number of years. Although at the beginning of January we started to look at this particular legislation in seriousness, I see no reason that we are being forced into pushing all these bills through, this one in particular, over the past week and this week. I am objecting now in public to the process.

I think if one wants to change things—and we will probably see this happen as we go through the amendments—you will see what opportunity the opposition has to change anything with this stacked committee, there is no doubt. I doubt very much if there is any positive listening going on to anything we might say about any one of these amendments if we are opposed to them and when we are opposed to them.

But in the interests of democracy and public input, I think it is a joke. As far as railroading through goes, that is exactly what it is, and it is not just this bill, it is a number of bills that are before the House right now.



Mr J. B. Nixon: If you had wanted (inaudible) had them, but you did not want them.

Mrs Cunningham: I would like to respond to that comment, even though it is not on the record. I am a member of this committee and I saw this bill a couple of weeks ago, in seriousness, for the first time. Because of the way we are working right now at Queen's Park, it is very difficult for the members of the opposition to go to meetings with two hours' notice, even two days' notice. We have tremendous workloads and we are responsible for positive input and change in thinking.

I got these things on Monday and I have had an opportunity to look at them, ask questions and phone back to London, the municipality I represent. All I got was, "We'd sure like to have an opportunity to have some more input on the amendments." This should have happened in February or March.

I am sorry, but if the government thinks it is okay because that is the way things are at Queen's Park now, it is not okay. The public is not buying it and should not buy it. Just because things are not working or have not been working, none of us should be sitting here accepting this process. I do not accept the excuses at all. None of us should be party to it. Maybe we are all to blame, but I do not have the same number of votes they do. They could be voting on this motion and delaying this thing until we can at least get back to our own constituents, never mind public hearings. I cannot get back to mine and I want to.

I am not going to buy this stuff about all of us being responsible for railroading. It just does not work. You can see the number of votes. I have been sitting on committees around here for a year and this is not the first bill that is particularly useless.

When I am told I have got five months, I do not like that. I have had exactly two days to look at this stuff and get responses. I have also had other committee work to do, House work to do, question period to do, the whole thing. We have a great deal of responsibility. You probably had caucus meeting this week. We did on Tuesday. Today we met; I got these yesterday.

I have been busy every minute of the day and I have not had a chance to make the phone calls. I had one hour today and two hours last night. Most of us have very heavy schedules, including the public, by the way. People are not able to return calls because they happen to work too. Never mind saying five months; I have had five hours.

The Chairman: I would ask all members to focus in on the---

Mr Jackson: Timing.

The Chairman: —on the timing, yes. Mr Jackson will conclude the discussion and then we will have a vote.

Mr Jackson: Thank you. I think both Mr Nixon and Ms Poole have missed the most important point, and that is simply that if we are to conduct public consultations, then in fact we should conduct public consultations with the subject matter and the facts as we know them so that we can benefit from their input.

If the process of public consultation is a charade, then we should at least admit it, but for us to suggest that the process of these hearings was

somehow a process confined only to the critics of two opposition parties or whether or not their individual attendance is a matter of importance at all in those matters is not nearly as important as the fact that we have 50-odd briefs that have been presented to us that are deficient with the 22 pages of amendments which you tabled less than 100 hours ago.

I guess my concern is that the parliamentary assistant rose as the first item of business today to correct the record with respect to some information which he gave to me and which I subsequently asked him to follow up personally because I took the time to follow up what he had to say to me. It had to do with the existence of a maintenance standards—

The Chairman: Could you focus your discussion?

Mr Jackson: I am talking about timing here, Mr Chairman. I am talking about the timing and the points raised by the Liberal members with respect to what we have been able to accomplish since 31 January 1989, which is when the government brought in its bill. If Ms Poole can tell us that we had sufficient time, then what the hell was the Ministry of Housing doing for five and a half months if it did not have these amendments until just recently? That is the point of this process.

We had the Association of Municipalities of Ontario come to us, and that group had expressed some serious concerns about the catch-22 I have referenced with respect to the implications for not being able to effect renovations to a building and how the municipality is going to be able to administer that examination and come to conclusions as to whether or not a permit would be permissible, whether or not it is vacant possession or an opportunity for vacant renovations.

That group came forward, having widely consulted—you were an outstanding member of that organization yourself, Mr Chairman—and for the last year and a half has consistently said, why has there been a total breakdown in communications on these pieces of legislation?

In terms of timing, the parliamentary assistant himself was assuring us that all the representatives of AMO had been notified of the impact of property maintenance standards legislation and its impact on Bill 211. He now finds out that no such memo was sent.

Mr J. B. Nixon: That is not what I assured you.

Mr Jackson: You assured me in Hansard that that was brought in effective the beginning of the year and that the municipalities had been advised. I checked with the legal departments of two municipalities and they told me they have received no such information.

Mr J. B. Nixon: We should look at the Hansard, but I think the assurance—

The Chairman: With all due respect, Mr Jackson, we are getting sidetracked from the resolution.

1650

Mr Jackson: I would like to finish. As I indicated, this bill was brought in on 31 January and we have not had an opportunity to fully examine the implications of the 22 amendments which were just recently tabled by the

government. The government has not satisfied us as to why it has waited until the 12th hour to bring in these amendments. The fact that we have had all these deputants come before us and they have not had the benefit of these amendments is further evidence that the process has not performed in accordance with what all three parties' members of this committee have set out as the objectives for this committee: for public consultations to be meaningful and to assist us in amending the legislation.

It is not and should not at any point become a process of window-dressing. I believe the resolution should be approved. There is no risk, which the parliamentary assistant mentions tenants will be put to, given the fact that the business of extending current legislation can be done before the end of the month. There will be no difficulty in having that arranged.

I do not feel that on this legislation or any subsequent legislation groups should be made to pay the price for the fact that the Liberal government of this province cannot organize its time in the House. Just because the government is hell-bent on closing off the legislation in the next few days is no reason we have to be pressured into prematurely bringing to a conclusion the process of consultation and the very important, meaningful aspects of clause-by-clause.

Bad legislation occurs only when we, as politicians, are too insensitive to what we are listening to, and when we get too lazy, when we do not want to take the necessary time to effect the proper amendment. That is exactly what we are falling into the hands of, because we are being told that we have to get all these clause-by-clause amendments done by tonight, period, end of sentence.

Ms Poole: Mr Chairman, can I just ask a point of clarification? At the steering committee—

The Chairman: I do not think there is such a point.

Ms Poole: This is about the steering committee meeting which had a representative from each party. Was it not agreed at that steering committee meeting by all three parties—

The Chairman: Just a moment. Are you making a point of order?

Ms Poole: Yes, a point of order. Mr Jackson raised the concern that two days was not sufficient for public hearings and clause-by-clause. He made that statement and then he went on after that to talk about the amendments.

The Chairman: I do not think you are making a point of order.

Ms Poole: My understanding is that the steering committee which included a representative from the Conservative Party agreed to the two-day terms for the committee to hear this and that that was an all-party agreement at the steering committee level.

Mr Jackson: Mr Chairman, I am being asked to clarify the point. What I stated—and Hansard will bear this out—is that in effect you are forcing, by your own government's incompetence with these last-minute amendments, a series of two public hearings: one on the legislation itself and another one to get reaction to the amendments.

We in opposition know that your vote is very much orchestrated and your

input is confined to the back rooms of your caucus. You are entitled to operate that way, but we in our position feel that if we are to present meaningful amendments we have to take your amendments and hear from the public what it thinks of them. On the matter of the Association of the Municipalities of Ontario, where public dollars are going to be spent as a direct result of this bill, I want input from my municipality, from the people who are going to have to pass on the cost of administering this bill to municipal property taxpayers.

You still fail to see the point after I have been trying to explain it to you. It is the fact that you can radically amend a bill and then expect to have window-dressed it with public consultation. That was the point.

The Chairman: I think we have had sufficient discussion. Mr Jackson has concluded the debate.

The procedural resolution is before you. It reads: "The committee recommends that Bill 211 be put on hold for six months to give the ministry time to consult more widely and correct the flaws in Bill 211, and further recommends that An Act to revise the Rental Housing Protection Act, 1986 be extended to 31 December 1989."

Shall Mr Jackson's resolution carry?

Mr Jackson: Could I have a recorded vote?

The committee divided on Mr Jackson's motion, which was negatived on the following vote:

Ayes

Cunningham, Jackson.

Nays

Carrothers, Nixon, J. B., O'Neill, Y., Owen, Poole.

Ayes 2; nays 5.

The Chairman: Bill 211 is before us for clause-by-clause discussion. The question the chair usually asks at this point is whether there are amendments and to what sections. I have a sheaf of amendments which have been circulated. Are there further amendments the chair should know about?

Mr Breaugh: I would appreciate the opportunity to put on the record that I am trying my best to expedite the process here. I am not a big fan of this bill, but I respect the opinion of those who are anxious to have it considered. In order to do that, I am going to waive the normal right I would have to put forward amendments and make my arguments that way. I may beg a little latitude from the chairman on some of the arguments, but most of what I want to say certainly can be said on either the government's new amendments or the bill itself, so we can handle that through the course of the debate.

We are under duress. I would like to put on the record, just to be fair, that I have had a reasonable amount of time to see the amendments, to check with caucus research about it and to get a fair amount of information; not as much time as I should have had and not as much as I would have liked. For example, there was a very good document from the research officer of the committee on my desk when I came in today. Obviously, you cannot go through



all of that and compare the notes you have from several other sources and hear witnesses at the same time. It is unfortunate that that very good work is not going to be of great assistance to us now, but I propose we now proceed as best we can to go through the bill clause by clause and deal with the government amendments.

I would ask the parliamentary assistant to give some consideration to the amendment which was circulated today. I apologize that I do not have the exact source, but I do recall that that argument was made by two or three of the groups making presentations yesterday. You may want to consider that.

Section 1:

The Chairman: Shall we begin with section 1 of the act? There are two amendments I have been given notice of. Before entertaining those, does the parliamentary assistant have any comments of a general nature with respect to section 1?

Mr J. B. Nixon: No. To be brief, these are definitions. In discussing the nature of the particular amendment to the definition of co-operative, I think it will become clear as to what we are doing.

The Chairman: Does anyone else have general comments on section 1?

Mr Breaugh: Two quick questions. This, of course, is one of the areas where one could cover the loophole of the hidden condominiums. Just to check again: Is it the government's intention not to bring condominiums into this bill in any sense?

Mr J. B. Nixon: We do not intend to bring in registered condominiums.

Mr Breaugh: Is there any sense that the government would be prepared to strike, perhaps by means of regulation, something which would at least provide people with the information that the rental unit they are living in is a condominium? It is a process which is supposed to happen in a number of ways now but really does not happen. Would the government be prepared at least to consider some standardization of form or some notice provision that the rental unit you are in is in fact a condominium and may at any time be sold?

Mr J. B. Nixon: What I have done personally, I can tell you, is speak to the Attorney General (Mr Scott) and say this may be an appropriate matter to be dealt with under the Landlord and Tenant Act, but there is no general government commitment I can make.

Mr Breaugh: I do not mean to be obnoxious here, but this is not exactly an earthshaking proposal, that someone be informed he is living in a rental unit which is in fact a condominium. Is there not some way the whole staff of the Ministry of Housing can think of to inform people that they live in a condominium unit?

1700

Mr J. B. Nixon: I will undertake to take that up with staff in the ministry, but I cannot make that commitment.

Mr Breaugh: If that set you back, this will really shock you.

Mr J. B. Nixon: That does not set me back.

Mr Breaugh: How about mobile homes? Is there any thought within the ministry of restructuring, perhaps not this bill but some other bills which would offer some measure of protection to people who are tenants, in the normal sense of the word, in mobile home parks?

I think Mr Owen, who has left us temporarily, deposited with us a letter informing you of a situation he is aware of. Part of the problem is that mobile home parks are set up in different ways and in different municipalities operate under different laws, but the problem is basically the same, that they do not have very much in the way of security of tenure. Is there any thought that you might make some moves under this act or other acts that would include them?

Mr J. B. Nixon: No, there is not.

Mr Breaugh: Thank you for your fine co-operation.

Mr Jackson: Just to follow up on Mr Breaugh's suggestion, the whole issue of notice provisions under Bill 51 is an area that concerned me.

Mr J. B. Nixon: Under Bill 51?

Mr Jackson: Yes, which is the point Mr Breaugh was raising. I think that if you look at the rent registry there is sufficient room in that computer program to deal with the question he has just raised, in terms of notice provisions. Quite frankly, when the original Bill 51 notices came out they did not even tell you the percentage your rent was going up. We have had a long way to go in terms of notifying tenants in this province.

My question would have been, to follow Mr Breaugh's, with respect to the exemption for condominiums: Does that include or exclude any planning with respect to those condominium units that have been receiving special consideration by your government for no-interest loans, particularly those kinds of buildings which were raised in the Legislature today, where they are condominiums but are getting rental housing interest-free loans?

Mr J. B. Nixon: I am not aware of the situation other than that a question was asked. I certainly do not have any facts or evidence that that is occurring and I really cannot respond.

Mr Jackson: Not so much that that is occurring, but where your government makes a distinction of one type of condominium, which is the private sector, which is registered as a condominium and then built for rental purposes. We now have a case where you can do that but get government money.

Mr J. B. Nixon: You say that is true and I am not sure it is true. That is why I am saying to you I do not have any facts or evidence to suggest that it is true and therefore I am not going to respond to a hypothetical.

Mr Jackson: I think the minister confirmed in the House today that she was aware of the situation but she would be getting back to us about the details of it. However, if the parliamentary assistant is unaware of these additional matters, I guess that is a matter for someone in your party to address: why you do not understand these things. But we will leave it at that.

Mr J. B. Nixon: It is not a question of whether or not I understand these things. You seem insistent on asking hypothetical questions that have little to do with this bill. I understood the purpose of this committee was to

get on with Bill 211. I understood that was your concern, too. I urge you to do that.

Mr Jackson: The purpose of this committee is to fast-track the bill. We have established that.

The Chairman: Having handled the general discussion, we have two amendments to section 1. Who is moving the first amendment? Mr Nixon, are you moving it?

Mr J. B. Nixon: Would you like me to read the first amendment?

Interjection: Can we take it as read?

The Chairman: Is there agreement to take it as read?

Mr Breaugh: I do not mean to be obnoxious, but you have to put stuff on the record, for crying out loud.

The Chairman: There are people who will be watching this on television and there is an audience here.

Mr Breaugh: Never mind whether there is an audience or anything else. To make it part of the official proceedings of the committee, somebody has to read your amendments into the record.

The Chairman: Mr J. B. Nixon moves that the definition of "co-operative" in section 1 of the bill be struck out and the following substituted therefor:

"'Co-operative' means a rental property that is;

"(a) ultimately owned or leased or otherwise held, directly or indirectly, by more than one person where any such person, or a person claiming under such person, has the right to present or future exclusive possession of a unit in the rental property and, without restricting the generality of the foregoing, includes a rental property that is owned or leased or otherwise held in trust or that is owned or leased or otherwise held by a partnership or limited partnership as partnership property, where any trustee, beneficiary, partner, general partner or limited partner, or other person claiming under such trustee, beneficiary, partner, general partner or limited partner, has the right to present or future exclusive possession of a unit in the rental property, or

"(b) ultimately owned or leased or otherwise held, directly or indirectly, by a corporation having more than one shareholder or member, where any such shareholder or member, or a person claiming under such shareholder or member, by reason of the ownership of shares in or being a member of the corporation, has the right to present or future exclusive possession of a unit in the rental property,

but does not include a nonprofit co-operative housing corporation as defined in the Residential Rent Regulation Act, 1986."

Briefly, the purpose of the amendment is to ensure that in the case that there is any doubt as to the meaning and legal definition of "co-operative" or usage of the legal definition of "co-operative" by any person, trust, limited partnership or corporation, it shall be defined as a co-operative and rules of the Rental Housing Protection Act as they apply to co-operatives shall apply.

In the recent past, as members of this committee may know, there have been some limited partnership offerings which include a right to occupy or own a particular unit, which we believe circumvents the existing legislation not legally but illegally. Those matters are being tried in the courts. The definition of "co-operative" has not been tested in the courts yet.

As this matter happened quite recently, we thought it most important from a public policy point of view to make it clear to the entire world that cares about this legislation that we intend, by virtue of our definition of "co-operative," to include all varieties of profitable legal schemes which may entitle someone to take ownership of a unit. That is why there is, and I apologize for it, the extensive legalese in the definition. It is necessary in our view.

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that section 1 of the bill be amended by adding thereto the following definition:

"'person' includes an individual, sole proprietorship, partnership, limited partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his or her capacity as trustee, executor, administrator or other legal representative."

Mr J. B. Nixon: The expansion of the definition of "person" follows from the expanded verbiage surrounding the definition of "co-operative." Once again, it is for the same purpose of ensuring that we cover off all legal schemes, partnerships, trust arrangements and corporate arrangements which would include, by way of purchase, a right to occupy a unit in an apartment building or rental building.

Motion agreed to.

Section 1, as amended, agreed to.

Section 2:

The Chairman: Mr Nixon, do you have general comments on section 2?

1710

Mr J. B. Nixon: Just give me one moment. There is one amendment to section 2 also, as you would note, Mr. Chairman.

The Chairman: Yes, I noted that. Before we get to the amendment, do you have any general comments on section 2?

Mr J. B. Nixon: The intention under section 2 is that—I am referring particularly to subsection 2(1), which talks about the application of the act and has been a matter of some discussion in the committee—by way of regulation, the government will designate those municipalities to which the Rental Housing Protection Act applies. We have indicated that the designation will be those municipalities with a population of 50,000 and over. That list will be revised triannually as a result of municipal enumeration data produced by the Ministry of Municipal Affairs.

The Chairman: Any comments on the amendment?



Mr Breaugh: I cannot support this motion. Members will know—perhaps the rest of the world does not know or care—but one of the things the government can always do to laws after they are passed, in a very public way most of the time, is strike regulations in a pretty private way. After they have made those private decisions on what the regulations should be, there is an obligation to publish them, but that is after the fact.

The striking of a regulation is a rather mysterious process and a pretty private piece of business. I would bet most members of the cabinet do not even know how regulations are struck. It means that the idea usually works its way up through the ministry, goes through a cabinet process and is then gazetted, as they say, in an official publication. None the less, I do not find that an acceptable way to proceed.

I want to put on the record too that the government has told me what its intentions are today on how to go about this. If that were binding then that would be fine, but what is binding today is the law. What is even worse is that the ability of the government to strike a regulation in private is also binding, which may totally change its intentions as stated today. I hoped they will not do that, but I know better.

Mr J. B. Nixon: I do not know better, I just have faith in the government.

Mr Breaugh: I have absolutely none.

Mr J. B. Nixon: I am surprised that you are here.

Mrs Cunningham: In looking at the document that was prepared by the legislative research officer with regard to the application of this act, this would be one amendment that would not be supported by the majority of people who came before the committee; if you just want to look at that. I think it is rather a significant change in emphasis and that under Bill 211 without this amendment, the law did not apply to a municipality unless it was so designated in the regulations.

This amendment, of course, means that all municipalities are covered by Bill 211 unless exempted. I think that the Association of Municipalities of Ontario, again, has said to us that this legislation, as it existed in Bill 11, should be made permissive, allowing municipalities to adopt these controls. All you have to do is take a look at page 3 of the overview of the input, and I think that this would have been one particular clause or amendment that we would have had some rather significant response to.

So I would suggest that this one not be passed. There are others that I will just let go, but because the input is somewhat overwhelming, this would have been a particular clause that we should have asked for further hearings on. So this would be one that I would urge the government members not to change at this point in time.

The Chairman: Just to clarify, we are dealing with the general discussion on section 2. We have not entertained an amendment as yet, but that is the next thing coming.

Mrs Cunningham: I consider myself having spoken to the amendment on the application of the act, given the evidence that came before the committee.

The Chairman: Mr Jackson, on the clause.

Mr Jackson: My concerns are quite similar, because it is my understanding that we are making a substantive adjustment here in how we apply which areas of the province are covered and which areas are not. I, for one, have a healthy scepticism about the role of regulations. We seem to be doing more and more of that. We will be doing it on Bill 147 when it talks about those items covered under the Ontario health insurance plan. The government wants to move that increasingly behind the doors, with the bureaucrats deciding on which operations get decided on and paid for by OHIP.

Quite frankly, I think that we have a similar situation here where certain communities can be adjusted in and outside of this legislation and I think that is wrong if it is not done in the public and in the presence of those of us who are responsible to debate these issues in a public forum.

It does not get debated in a public forum, it is all decided by bureaucrats. The only saving grace in the Ministry of Housing is that there is an apparent conflict between the government and the bureaucracy in terms of the direction we should be going in some of these matters, but as we all know, the government of the day will always win out over the best advice of the people they pay to administer these things.

I, for one, cannot subscribe to the notion of putting at regulation those matters which should be spelled out clearly in legislation. It is fairer to the municipalities that will be called upon to administer it, it is safer for the legal departments which are responsible, and not have to read about it in the Gazette that all of a sudden all municipalities in Ontario with 20,000 people or more are now included or that it gets adjusted in Mr Breaugh's perception, heaven forbid, to communities with 200,000 or more, that it is only eligible there.

I just think it is unfair and inappropriate to take these matters and essentially hide them in red tape, which is what happens to them, as opposed to being able to send to a constituent or a municipal politician a copy of a bill where it clearly stipulates what the rules are and we have to go before the public in order to change it. I think it is a fundamentally wrong approach.

The Chairman: Mr Nixon, are you ready to move your amendment?

Mr J. B. Nixon: Yes.

The Chairman: Mr Nixon moves that subsection 2(1) of the bill be struck out and the following substituted therefor:

"(1) This act applies to rental property situate in any municipality in Ontario, except a municipality that is exempted by the regulations, despite any other act and despite any agreement to the contrary."

Any comments on the amendment?

Mr J. B. Nixon: The amendment is one of those ones that is really a matter of housekeeping more than anything else.

Mr Breaugh: Some house.

Mr Jackson: That explains it. If it is housecleaning, it is to be done in the basement. That was our point.

The Chairman: Other comments?

Mr J. B. Nixon: Could I just finish explaining why?

The Chairman: I am sorry; I thought you were through.

Mrs Cunningham: Yes. We would like to hear this.

Mr J. B. Nixon: Just wait. Keep your shirt on, Dianne.

Interjection.

Mr J. B. Nixon: I am blushing because---I should not have said that.  
I apologize.

Mrs Cunningham: Why apologize?

Mr J. B. Nixon: I do not want to be rude.

In light of the timing of the review and final---

Mr Jackson: Be obnoxious.

Interjections.

Mr J. B. Nixon: Okay, okay.

The Chairman: Order, please. Mr Nixon has the floor.

Mr J. B. Nixon: The reason for this amendment is simply to insure that all municipalities are covered by the present act until there is a regulation passed under the new act. Some of you may know that you cannot pass a regulation contemporaneous with proclamation of the act.

Mr Jackson: I think it should be spelled out.

Mr J. B. Nixon: You asked me why we are producing the amendment, you did not ask me why we are doing 2(1). I will talk about 2(1) and I will talk about the amendment. The amendment is there simply to deal with the problem that you cannot proclaim a regulation contemporaneous with proclamation of the act. It is physically impossible.

Mrs Cunningham: Could you then tell me, in the former act where we were talking about designated by the regulations, were the regulations introduced at the same time?

Mr J. B. Nixon: I honestly cannot say, because I was not here at the time.

Mrs Cunningham: Was the same process applied?

Mr J. B. Nixon: I honestly do not know.

Mrs Cunningham: Could the staff tell us?

Mr J. B. Nixon: Perhaps they could.

Interjection: It is highly unusual for that to happen.

Mrs Cunningham: I would think so.

Mr J. B. Nixon: Mr Laverty could perhaps answer that, or Ms Taylor.

Mrs Cunningham: How was this problem covered last time is my question.

The Chairman: I believe Mr Nixon is referring it to one of the staff.

Ms Taylor: The wording in the former act is very similar to the amendment that we are proposing now. It was dealt with in the former act the same way as we are proposing to deal with it now; that is, municipalities are all subject to the act unless they are exempt. Until the regulations that were passed when the former act came into force, all municipalities were subject to the act.

1720

Mrs Cunningham: If I can just comment on that, when this particular bill was struck, I would have expected then that the people who came before the committee may indeed have thought or expected that the regulations would have been tabled perhaps at the same time. If not, if that was impossible, perhaps one should have done his work appropriately in the first place; that is, the intent now is somewhat different. Perhaps it would have been a good idea—in fact, it would have been a good idea—if you had this amendment as part of the original, it should not have been an amendment; it should have been an original clause to coincide with the process that was followed previously.

If that is a problem in talking about "designated by regulations" when one is drafting legislation, I am not the expert, but I can tell you it should have been put up front. Otherwise, it should have been found a long time ago by the government and the staff. You cannot expect the public to come down here and find this kind of change because of a mistake, and that is a mistake. Tell me if I am incorrect on that, if I can have the parliamentary assistant respond.

Mr J. B. Nixon: You made a number of unrelated points, in my view, and I will try to deal with what I think is the germane point. Quite simply, in the discussions with the interested groups, there was disclosure of the intention to pass a regulation along the lines of having the act apply to those municipalities in excess of 50,000. They were aware. There was a lot of discussion around that issue, no doubt, but there was an awareness. Even if we were to put the regulation before you, we would be arguing about substance, I would hope, rather than the drafting of the regulation.

In any event, we are here to debate the bill. I know Mr Jackson is going to say I am missing the point. That is not the point Mrs Cunningham made, right?

Mrs Cunningham: Why did you not do it right in the first place?

Mr Jackson: Are you asking us or telling us?

Mr J. B. Nixon: Probably a little of both.

Mrs Cunningham: But you would agree that this is the mistake. If you are going to pass a bill and you do not have the regulations there for us to look at at the same time, and you refer to them in the legislation, why do you not just say what you mean in the first place, which is what you are saying today?



Mr J. B. Nixon: I think I have always said what I meant. You may not have understood me.

Mrs Cunningham: No. This act applies to rental property situate in municipalities designated by the regulations. Members of the public had no idea what the regulations were when they came down here. Is that correct?

Mr J. B. Nixon: No. That is the point I just made with you. I said that the groups we consulted with, I believe, went around the mulberry bush with us on this issue. We talked about the regulations.

Mrs Cunningham: What are the regulations? Where are they?

Mr J. B. Nixon: The regulation has not been drafted, but the intent of the regulation is that the act—

Mrs Cunningham: That is my point. Why have you not had them drafted?

Mr J. B. Nixon: Mrs Cunningham, your point changes with each comment.

Mrs Cunningham: No, it does not. You made a mistake in drafting this bill if you were not prepared to table the regulations.

Mr J. B. Nixon: Mr Chairman, I am not going to acknowledge that there was a mistake, but Mrs Cunningham is entitled to her opinion.

Mrs Cunningham: The Association of Municipalities of Ontario says that the legislation should be made permissive, allowing municipalities to adopt these controls if deemed necessary. The very first point was that the bill imposes legislation on the entire province in order to deal with a problem that is almost entirely centred in Metro Toronto and should take account of that fact.

Smaller municipalities do not like the changes you have made today in your amendment, and I am here to express that point of view.

Mr J. B. Nixon: Quite to the contrary, smaller municipalities do appreciate being exempted, as they are. In fact, the permissive legislation that AMO wants is the local option.

Mrs Cunningham: The local option?

Mr J. B. Nixon: Yes.

Mr Jackson: AMO prefers, quite frankly, to be consulted properly. That was what they have asked for.

Mr J. B. Nixon: And AMO was fully consulted.

Mr Jackson: Yes. They still have not got the amendments.

Mr J. B. Nixon: No. AMO has not got a decision that it likes, but—

Mr Jackson: AMO does not have the amendments that you have tabled with us recently. That was my point.

Mrs Cunningham: Mr Chairman, just to follow—

The Chairman: We have before us this specific amendment and we should be---

Mrs Cunningham: I know. I would just like to make one more statement, and that is this amendment means that all municipalities are covered by Bill 211 unless exempted by the regulation, and we do not know what the regulation is.

Mr Jackson: This is not a hypothetical question. The Federation of Metro Tenants' Associations, for example, came forward and suggested that there were gaps with some municipalities that were in the greater Toronto area but are exempt from this legislation. They were cited here yesterday, as a matter of fact. Are you able then, in regulation, to take that recommendation and completely correct it and have that gazetted without those municipalities in the GTA knowing about it until they read about it?

My concern---it is not hypothetical really---is that some of those municipalities are unaware that there was a presentation made asking that their municipalities be included, but once we pass this you can just go behind closed doors and do it. They will read about it in the Ontario Gazette because legal councils and municipalities get the Gazette and they try to read through it.

Mr J. B. Nixon: One thing you should be aware of that will apply is when we get to section 3 of the act---

Mr Jackson: We will, eh?

Mr J. B. Nixon: I am trying to get there. It deals with exemptions. You should understand that there are provisions of this act which apply to all municipalities. The condominium conversion provisions---the provisions that essentially these municipalities are exempted from are the provisions relating to demolition and provisions relating to renovations. Okay? We have considered the suggestion, and I think this is what you are getting at, that we move the criteria for application of the Rental Housing Protection Act to the regional municipal level.

There are a couple of problems, but one obvious problem is that regional municipal officials are not engaged in all those sorts of activities that would have to be engaged in in order to make representations to council on the criteria for approval or refusal to allow renovations for demolitions; ie, looking at the building and finding out whether it is structurally sound and so on. We have considered---

Mr Breagh: The answer is he does not know.

Mr J. B. Nixon: I am not sure where you want us to go.

Mr Jackson: I simply asked---I am on the subject, Mr Chairman---if by regulation you can now include these municipalities?

Mr J. B. Nixon: We could, but this government is different from how some other governments are perceived to be, I think.

Mr Jackson: Of course, you are different. You bring in 22 pages of amendments at the 11th hour. That is quite different. We have established that. I want to talk about whether the regs can reflect what we received as a public deputation. Whether I support it or not is not the issue---I do not

support it—but I would like to know if you have done any work on your regs at all, if you have been listening to the deputations at all. That is what I am trying to get at. I am not trying to dance with you. I would like to get out of here by six o'clock, just like you would.

Mr J. B. Nixon: Ask the question directly and you will get a direct answer.

Mr Jackson: I did. I gave you the example and I was wondering—

Mr J. B. Nixon: No, you did not, but I will tell you what the direct answer is. Okay? The direct answer is part of the reasons for having these hearings and having the consultations was to get advice on some of the regulatory criteria for approval. Of course we have been listening and of course there are some ideas being put forward that are valuable, but—

Mr Jackson: And you do not think that was a very good idea is what I got back from you on that.

Mr J. B. Nixon: No, you did not ask the question. That was not the question, as I understood it.

Mr Jackson: You said there were difficulties with the region passing on its authority, and I put it in the context of what is the attitude of your regs with respect to the recommendations from Metro Tenants.

Mr J. B. Nixon: Ask a direct question and you will get a direct answer. It is valuable advice and we are considering it.

Mr Jackson: Oh, it is valuable advice and it is being considered.

Mr J. B. Nixon: Yes, but the government has taken no decision on this matter.

1730

Mr Jackson: I hope the Liberal members representing those communities will so advise their councils.

Mr J. B. Nixon: I think it would be entirely appropriate for this government, and I know this government is concerned about individual municipalities, to have the advice of the local municipality and indeed a resolution of the local municipality on that matter before acting.

Mr Jackson: On the regulations.

Mr J. B. Nixon: Yes. I understand Mr Laverty has something to say on this matter too.

Mr Laverty: Just a technical point: Legislative counsel may wish to help me out in this regard. In terms of what will transpire between the time this act comes into force and the time the regulation comes into force, it is my understanding that because this act is similar to the previous legislation, there is a legal argument that the municipalities covered under the previous legislation would continue to be covered until the new regulation was in force. However, that is not an absolutely certain legal argument and for that reason we are putting forward this amendment, to guarantee that the

municipalities now covered will not lose coverage in the interim. That is the technical purpose for the amendment.

The Chairman: Are we ready for the question on the amendment? Shall the amendment carry? All those in favour of the amendment please indicate? Opposed?

Motion agreed to.

Section 2, as amended, agreed to.

Section 3:

The Chairman: On section 3 of the bill I do not have any amendments.

Mr J. B. Nixon: There are no amendments to section 3.

The Chairman: Are there any general comments?

Mr J. B. Nixon: Section 3 deals with a number of exemptions from the general application of the act. Most specifically, it can be found in subsection 2. Rental properties with four or fewer units are exempt. However, that exemption does not include an exemption from the condominium conversion provisions, which is the matter dealt with in subsection 3. The exemption in subsection 4 refers to buildings that were not used as residential premises prior to the proclamation of this act or premises that were converted prior to this act without contravention of the predecessor.

Mr Breaugh: This is one of the sections where I have a number of substantive problems. It has to do with all the exemptions that are available. A number of people have made presentations before the committee that it exempts, in many communities, areas where in fact that is the rental accommodation stock you are trying to protect, the smaller units.

I want to set aside that argument and go to the other one. I realize the government is not prepared to accept very much in the way of amendments on this, but I just want to reiterate that I think it is sick when a government provides financing to the private sector, supposedly to build affordable rental accommodation, to the tune of \$3 million, and the same government turns around and provides by means of a regulation the exemption that means they not only get interest-free money to finance the cost of the building, but they get the co-operation of the government to show they can also register that as a condominium if they want to so they can liquidate their assets.

It is true that if that happens, the developer is expected to pay the money back, so all he got out of the deal was the use of the \$3 million for four or five years, which is not bad going. I just think that is a sign of a general sickness on the part of government, that it does not know what the hell it wants. They do not know how to go about this and they provide exemptions, such as we see in this section of this act, that really thwart a lot of things.

I want to close by saying that I know the inclusion of registered condominiums is somewhat controversial and I am prepared to yield that there is an argument on the other side of the coin here, that someone bought a condominium unit and may want to use it for his own purposes and things of that nature. I just want to put on the record that part of the reason I raised



this issue is that this is going to continue to be a very dramatic piece of business.

However much testimony we have heard about, "If you move to include condominiums, the world will end tomorrow morning and no other rental accommodation will ever be built in Ontario," I really do not believe that. I honestly do not. I think there will continue to be investors who will want to use rental accommodation in the traditional way. I still think there will be people who will want to put up condominium projects and rent them out. I still believe there is a market for that, no matter what you do in here.

Supplying to the private sector large amounts of money, purportedly to provide affordable rental accommodation, and then turning around, by means of regulation, and providing it with the other option of turning it into condominiums or registering it as condominium units is, I think, a general sickness and I really think it is morally reprehensible and wrong.

Mr Jackson: I, for one, if the government were ever to even consider inclusion of condominiums by regulation or by legislation, would consider that equally as sick, given that it violates the principles of home ownership of people who buy, whether they move in now or move in a year from now or six years from now. I am getting a little sick and tired of these mounds of legislation that fly in the face of any rights citizens have in this province.

My ancestors fled a country in eastern Europe because their land was taken away from them. It just disturbs me greatly when I see our province evolving in a direction that is moving towards that same agenda. I, for one, will fight it any way I can, so I certainly am pleased the legislation does not go as far as it could have gone, but I think it has gone too far as it is. Mr Breagh knows how strongly I feel about that.

I guess the only thing sicker than what Mr Breagh suggests is when employees of the---

Mr Breagh: Get off the pot. Tridel does not need your help and there is no reason in the world why the public trough should finance \$3 million worth of their building and then these guys in private write a regulation that allows them to maximize their profit. Do not get sick about all of this.

Mr Jackson: Mr Breagh, you know that if your party would get off the pot with respect to the universal nature of rent control and if you would even adhere in some consistent fashion to the principles set out in the Social Assistance Review Committee report with respect to shelter subsidy, we would not be in the God-damned mess we are in.

Mr Breagh: We are in this mess because of your party in the last 45 years of one-party rule.

Mr Jackson: I voted against it and you know why I voted against it.

The Chairman: Order, please. Would the people who have been recognized by the chair be given the courtesy of speaking?

Mr Jackson: I apologize, Mr Chairman. I get very exercised about this matter.

The Chairman: You had the recognition of the chair. Mr Breaugh did not.

Mr Carrothers: Okay; let him apologize.

The Chairman: Shall section 3 carry? All those in favour, please indicate. Opposed?

Section 3 agreed to.

Section 4:

The Chairman: We have three amendments. Prior to entertaining the amendments, Mr Nixon, do you have any general comments on section 4?

Mr J. B. Nixon: Section 4 is one of the more significant elements of the bill. It is the general prohibition on demolition, conversion and renovation but for those cases where the council of the local municipality in which the property is located has approved the demolition, conversion and renovation or repair.

The Chairman: Mr J. B. Nixon moves that clause 4(1)(b) of the bill be struck out and the following substituted therefor:

"(b) converted to use as a condominium, co-operative, hotel, motel, tourist home, inn or apartment hotel, or to any use for a purpose other than rental property."

1740

Mr Jackson: One of the deputants suggested that there were some difficulties with respect to mobile homes. As I understand it, mobile homes have evolved in terms of finding a place in legislation in Ontario in a very difficult fashion. The government indicates they are not included in here. Is there a reason? I may not have been present when you reacted to that question or you may have chosen to be silent on it. This would be one of the areas in which to insert that. I am not willing to insert it, but I would like to understand why the government is unwilling to insert it.

Mr Breaugh: Did you have one of those cheap lobotomies, Cam?

Mr J. B. Nixon: Essentially, you have a land owner who rents out his land and access to services to an owner of a home who parks the home there for six hours, six days, six weeks, six months.

Mr Jackson: Under a tenancy agreement.

Mr J. B. Nixon: Under some form of tenancy agreement.

Mr Jackson: That is why it is covered under the Landlord and Tenant Act.

The Chairman: Mr. Jackson, you asked a question.

Mr Jackson: I am trying to build my understanding here.

The Chairman: Would you allow him to answer it and then if you are not satisfied, you can pursue it.

Mr J. B. Nixon: Some form of lease arrangement. I guess if you are looking for the policy reason, those types of homes just do not have the same degree of permanency. There are other places for them to go. Staff may have a comment too; I do not know.

Mr Jackson: Don't look at me that way. I did not give it to you.

Interjection: You have to bail him out.

The Chairman: Any further discussion on the amendment?

Mr J. B. Nixon: Just let me make the point that the feeling was that "once a rental lot" does not mean it always has to be a rental lot for a mobile home. That is the distinction between a rental lot and a rental apartment, I guess.

Mr Laverty: Just by way of additional clarification, the act does in fact cover some mobile homes, where the mobile home and the site are both rented, because that would fit within the definition of a rental property that is a building. The mobile home itself would be a building. We are dealing with a situation in which both the site and the mobile home are rented. Those would be covered by the act. It does not cover the sites and it does not cover temporary accommodation in trailer parks.

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that clause 4(2)(a) of the bill be struck out and the following substituted therefor:

"(a) A person referred to in section 105 of the Landlord and Tenant Act, except that approval is required where the occupation is pursuant to a notice of termination given on the grounds set out in that section if,

"(i) another notice of termination has been given on the grounds set out in the said section 105 in respect of any rental unit in the rental property and the tenant thereof has vacated the premises pursuant to that other notice, unless three years have passed since the date the other notice was specified to be effective, or

"(ii) within any 60-day period, notices of termination are given on the grounds set out in the said section 105 in respect of any two or more rental units in the rental property, and the occupation of the rental units is to be by a person or persons referred to in the said section 105."

Motion agreed to.

Mr J. B. Nixon: I was going to suggest, in the interests of time, we could perhaps vote on all amendments together. Does that make sense? No?

The Chairman: No. We are on section 4. Would you move the final amendment.

Mr J. B. Nixon moves that section 4 of the bill be amended by adding thereto the following subsection:

"(2a) Clauses (1)(a) and (b) do not apply so as to require the approval of the council of the municipality where the demolition or conversion affects only those portions of a rental property in which no residential units are situate and in relation to which no vacant possession of a rental unit is required."

Motion agreed to.

Section 4, as amended, agreed to.

Section 5 agreed to.

Section 6:

The Chairman: Mr J. B. Nixon moves that paragraph 1 of section 6 of the bill be struck out and the following substituted therefor:

"1. A permit to construct or demolish a building under section 5 of the Building Code Act."

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that section 6 of the bill be amended by striking out paragraph 4 thereof.

Motion agreed to.

Section 6, as amended, agreed to.

Section 7:

The Chairman: Mr J. B. Nixon moves that subsection 7(2) of the bill be struck out and the following substituted therefor:

"(2) Subsection (1) does not apply to a lease or an agreement to lease an interest in a co-operative, or in a corporation owning or leasing any interest in a co-operative, for a term, including any entitlement to a renewal or renewals, of less than 21 years.

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that subsection 7(4) of the bill be struck out and the following substituted therefor:

"(4) A conveyance, lease, agreement, arrangement or transaction entered into in contravention of subsection (1) is voidable at the instance of the person who acquired the interest in the co-operative or in the corporation owning or leasing any interest in the co-operative and any amount paid under the conveyance, lease, agreement, arrangement or transaction is recoverable by the person who so acquired the interest.

Motion agreed to.

Section 7, as amended, carried.

Sections 8 to 10, inclusive, agreed to.



Section 11:

The Chairman: Mr J. B. Nixon moves that subsection 11(5) of the bill be amended by striking out "during daylight hours" in the third line and inserting in lieu thereof "at reasonable times".

Mr Breaugh: I have a question as to the definition of what you mean by "at reasonable times."

Mr J. B. Nixon: The "at reasonable times" is a type of phraseology that is used and the expectation is to the court. If common sense is not going to apply, then the wisdom of a court will apply.

Mr Breaugh: So what you are looking for here is that with the wording you are proposing in the amendment, if you went to court, a judge would be considering matters such as if somebody gave you some notice that he would want to come in during the course of the evening. Obviously, if you came in at two in the morning that is not a reasonable time.

Mr J. B. Nixon: Absolutely.

Mr Breaugh: So you want to get it on to those grounds for the legal argument.

Mr J. B. Nixon: There is substantive case law in the Landlord and Tenant Act defining reasonable access and reasonable time and all that.

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that subsection 11(10) of the bill be struck out and the following substituted therefor:

"(10) Written notice of the decision of council, including the reasons for the decision and the time limit within which the decision may be appealed to the Ontario Municipal Board, shall be sent within five days of the making thereof to the applicant, to every person who in writing requested to be given notice of the decision and to every other prescribed person."

1750

Mr Jackson: Was this amendment discussed with AMO at all?

Mr J. B. Nixon: I do not believe so, no.

Mr Jackson: Are there cost implications to this amendment for municipalities?

Mr J. B. Nixon: I do not believe there would be. I will check with staff. In terms of the amount of paper you have to send out, it is still the same amount of paper.

Mr Laverty: Obviously the form would be different, but we are talking here about the information that would be provided to potential applicants. The purpose of the amendment is to make sure the applicant knows the deadline with regard to appeals and knows what the reason for the order is

Mr Jackson: Where did you come up with the idea of five days? Was that in the original motion?

Mr J. B. Nixon: Yes.

Motion agreed to.

Section 11, as amended, agreed to.

Section 12:

The Chairman: Mr J. B. Nixon moves that section 12 of the bill be amended by adding thereto the following subsection:

"(3) Where the terms of an agreement registered under subsection (1) have been complied with or where the time during which the agreement is to remain in effect has expired, the municipality shall cause to be registered in the proper land registry office a certificate signed by the clerk of the municipality stating that the terms of the agreement have been complied with or that the time the agreement is to remain in effect has expired, as the case may be, and thereupon the land against which the agreement is registered is free and clear of the terms of the agreement."

Motion agreed to.

Section 12, as amended, agreed to.

Section 13 agreed to.

Section 14:

The Chairman: Mr J. B. Nixon moves that subsection 14(4) of the bill be amended by inserting after "warrant" in the ninth line "in the prescribed form."

And further moves that subsection 14(8) of the bill be amended by inserting after "warrant" in the tenth line "in the prescribed form."

Motion agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

Section 16:

The Chairman: There are no amendments. Is there any discussion?

Mr Breaugh: I just wanted to make note of one little thing and not make a big deal of it. This is the section which allows the ministry to provide for grants to municipalities to assist them. It is using the traditional words, "the minister may."

One of the concerns I would just like to put on the record, not to belabour the point, is that whenever we do this kind of thing, where an act is written and the basic people who will carry out the process will probably in large measure turn out to be people working at another level of government, there is this traditional problem that the ministry may well provide them with

some training costs, may well provide them with some information packages, but traditionally shies away from the ongoing staff costs.

Part of what the municipalities beef about, and they have good reason to do so, is that it is okay for the province to write new laws, but if it wants to write new laws it has to underwrite the cost of implementing those new laws. That has been a traditional problem. In conversations with people from AMO, this has been one of the difficult areas. It is difficult from a number of points of view: It is difficult for the municipality in terms of financing those costs; and for those who believe they have a law which is in effect now, but who very often call their city hall and find out that yes, the law is there, and this is what we should do, but there is nobody to carry out or enforce that law. That has been an ongoing problem and it is going to be continued.

Mr. J. B. Nixon: I do not know if I can answer all of the perhaps general concerns you have raised, but this is a new provision in this bill. There was no authority under the old bill for the minister to make grants to assist in training staff.

Mr. Jackson: I am sure the parliamentary assistant did not suggest that the absence of its inclusion in Bill 11 somehow prevented the government from coming up with that. Section 16 is a humongous pacifier to take the sting out of legitimate concerns being raised by municipalities.

I just want to make it clear that when you respond, it is to overcome the fact that it was not in the previous legislation. Your government could have brought in the same assistance referred to in section 16 on Bill 11, Bill 51, or the maintenance standards board which you thought would already have been notified of but has not as yet.

I find it to be window-dressing. To prove my point, I would put in an amendment to say "shall," and then watch all the Liberals defeat it. But that would only take up valuable time at this fast-tracking committee.

Are you willing to present the motion, Mr Carrothers? I did not think so

Section 16 agreed to.

Section 17:

The Chairman: We have notice of two amendments.

Mr J. B. Nixon moves that subsection 17(1) of the bill be amended by striking out "a use other than rental property" in the seventh line and inserting in lieu thereof "a condominium, co-operative, hotel, motel, tourist home, inn or apartment hotel, or to any use for a purpose other than rental property."

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that paragraph 17(1)2 of the bill be struck out and the following substituted therefor:

"2. An order requiring the owner or tenant or any subsequent owner or tenant to return the property to the use to which it was being put immediately prior to the conversion or attempted conversion."

Motion agreed to.

Section 17, as amended, agreed to.

Section 18:

The Chairman: There are two amendments on this section.

Mr J. B. Nixon moves that clause 18(a) of the bill be struck out and the following substituted therefor:

"(a) exempting any municipality or part thereof from this act."

Motion agreed to.

The Chairman: Mr J. B. Nixon moves that section 18 of the bill be amended by adding thereto the following clause:

"(ma) prescribing, for the purpose of subsection 14(4), the form of a warrant to enter and inspect, and for the purposes of subsection 14(8), the form of a warrant to enter and search."

Motion agreed to.

Section 18, as amended, agreed to.

Sections 19 and 20 agreed to.

Section 21:

Mr Jackson: It has to do with the laying of charges. How long is that period of time?

Mr J. B. Nixon: Two years. Previously, it was six months.

Section 21 agreed to.

Section 22:

The Chairman: Mr Nixon moves that subsection 22(2) of the bill be struck out and the following substituted therefor:

"(2) No action or other proceeding for compensation or damages shall be instituted against any officer or employee of a municipality for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

"(3) Subsection (1) does not, by reason of subsections 5(2) and (4) of the Proceedings Against the Crown Act, relieve the crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject and subsection (2) does not relieve a municipal corporation of any liability in respect of a tort committed by a municipal officer or employee to which it would otherwise be subject, and the crown or



the municipal corporation, as the case may be, is liable for any such tort as though subsections (1) and (2) had not been enacted."

Motion agreed to.

Section 22, as amended, agreed to.

Sections 23 to 25, inclusive, agreed to.

Section 26:

The Chairman: On section 26 there is an amendment which is out of order, but the intent of the amendment can be accomplished by voting against section 26.

Mr Breaugh: And I invite all the government members to join me in voting against this section.

Mr J. B. Nixon: We will.

The Chairman: Shall section 26 carry?

Interjections: No.

Section 26 negatived.

Section 27:

The Chairman: On section 27 there is one amendment.

Mr J. B. Nixon moves that section 27 of the bill be struck out and the following substituted therefor:

"Subsection 12(2) of the Rental Housing Protection Act, 1986, being chapter 26, as amended by the Statutes of Ontario, 1988, chapter 22, section 1, is repealed."

Section 27, as amended, agreed to.

Section 28:

The Chairman: Mr Nixon moves that section 28 of the bill be struck out and the following substituted therefore:

"(1) This act, except sections 24 and 25, comes into force on the 30 June 1989.

"(2) Sections 24 and 25 shall be deemed to have come into force on 31 January 1989."

Section 28, as amended, agreed to.

Section 29 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

The Chairman: Is there any further business to come before the committee? I thank all members and delegations for their co-operation on this bill and remind you again that this committee will not be meeting on Thursday. However, there will be a subcommittee meeting to discuss the further business of this committee on Thursday, and I would suggest that we invite the critics and ministry representatives for Health and Consumer and Commercial Relations to that meeting so they can be present to assist us.

Interjection: What time?

The Chairman: Following routine proceedings.

Mr Jackson: I would like to commend the staff for, under the unusual circumstances of this bill, having to react and respond to last-minute amendments. They did it with a lot of extra time and effort and I, for one, wish to thank the clerk and the research officer for helping us through this difficult bill.

The Chairman: And I thank all members and the two opposition parties for their co-operation in completing the bill prior to six o'clock today.

The committee adjourned at 1804.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
INDEPENDENT HEALTH FACILITIES ACT, 1989  
TUESDAY 8 AUGUST 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Reville, David (Riverdale NDP) for Mr Allen

Hosek, Chaviva (Oakwood L) for Mr Beer

Pelissero, Harry E. (Lincoln L) for Ms Poole

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:

Caplan, Hon Elinor, Minister of Health (Oriole L)

MacMillan, Dr Robert, Executive Director, Health Insurance Division

Sharpe, Gilbert, Director, Legal Services Branch

From Tory, Tory, DesLauriers and Binnington:

Spence, James

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday 8 August 1989

The committee met at 1415 in committee room 1.

INDEPENDENT HEALTH FACILITIES ACT, 1989

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chairman: Members of the committee, I will call the meeting to order. This is a meeting of the standing committee on social development convened to consider Bill 147, An Act respecting Independent Health Facilities. I would like to welcome everyone to the meeting. We have a full committee ready to deal with the bill and we have the Minister of Health (Mrs Caplan) and some of her staff here. She will be introducing them later. We have quite a few people sitting in to observe, perhaps staff and other representative groups that may be appearing later.

Before we begin this afternoon's item, which is a briefing by the Ministry of Health, I would like to mention that every member has a copy of the bill, and in addition to that, a second reprinting of the bill that was done for the purpose of showing the proposed government amendments that have not yet been incorporated into the bill. So the bill that was sent to us by the House is this one, and then there was another one that was reprinted to show amendments proposed by the Minister of Health. This reprinted copy is done for convenience; it is not an official copy. However, the clerk has circulated it to all the delegations that will be appearing before us. It is my recommendation or suggestion, as chair, that we use this as the working copy for the next three weeks or so. Is there any objection to that?

Mr Reville: Agreed.

The Chairman: Okay. I do not think there are any other housekeeping items. We will proceed immediately to the presentation. You know we have this afternoon, and we have reserved some time tomorrow. If there is a need to continue with questions to the minister or the ministry tomorrow, that can be done. However, we may finish this afternoon.

I would like at this time to introduce the minister, the Honourable Elinor Caplan, to make a brief presentation and then to introduce the staff who are assisting her.

MINISTRY OF HEALTH

Hon Mrs Caplan: I have very brief opening remarks and then we will ask the ministry officials to undertake the overview briefing for today.

Perhaps before I begin, I can introduce Robert MacMillan, who is the executive director of the health insurance division out in Kingston. When this process began, Bob had the carriage of the policy development as the assistant deputy minister, community health, at the time. Also here is Gilbert Sharpe, director of legal services, Ministry of Health. Gilbert is considered one of the foremost health law experts in Canada and is available to answer any of

the technical questions as well. Before they begin their presentation, they will introduce all the ministry staff who are here.

I am pleased to have the opportunity to begin the legislative hearings on what I think is a significant piece of legislation. As you know, the Ministry of Health is spearheading a move to provide a setting to promote and foster the growth of more community-based health services that can be safely provided outside the hospital setting. The Independent Health Facilities Act, which I introduced in the Legislature in June 1988, will be the government's major instrument to allow for this profound positive shift in direction that is planned for health care in Ontario. It is a major part of the government's commitment to improve both the availability and quality of health care in this province.

Fundamentally, this ground-breaking legislation will allow the Minister of Health to develop and regulate community-based facilities as alternatives to hospitals. These community-based facilities will be closer to the people than centralized hospital services often are. This unique act will give us the opportunity to bring health care closer to where people live, and in fact to more people.

For example, funding incentives under the act will be used to expand community-based health care in our northern communities, often experiencing remoteness and challenges of geography. It will allow for program and service expansion of our popular community health centres and health service organizations.

These local facilities, which are not as capital-intensive as hospitals, will, I believe, be kinder to the public purse, to the taxpayers of this province than the continuous round of hospital expansion projects, particularly during this difficult and uneasy period of high interest rates.

1420

We, as government, strongly believe that community-based facilities can safely provide many of the health and medical services that have always and traditionally been performed in hospital settings. For many years now, new technologies have allowed increasing numbers of treatments and procedures to be safely and routinely performed in nonhospital settings. I can tell you from everything I have learned in the past two years as Minister of Health that we have not seen the end of this new and emerging technology and this new reality in both hospital medical and health care.

The rapid strides in emerging new technologies will see more and more health care and health service procedures being performed and able to be performed in community-based, nonhospital settings. However, this new reality has caused a major headache for the ministry. Until now, we have lacked suitable funding and quality assurance mechanisms that have governed and paid for these procedures in hospitals. Patients are now being asked to pay for overhead costs in these facilities and we are starting to see the beginning of two-tiered medicine creep into our health care system.

The Independent Health Facilities Act will be our mechanism for funding, planning and monitoring the province's community-based facilities. I can assure you that the licensing process will be open and fair. We intend to give preference to not-for-profit and Canadian proposals so that there is no need to fear any international treaty or any obligation to which our country is party. Our district health councils will be helping us to determine the need

and the location of new community-based facilities. All applications will be reviewed and the ministry will issue calls for proposals where appropriate.

The ministry, under the act, will also have the regulatory authority to develop and enforce quality assurance standards once facilities are licensed. The facilities themselves must, under the dictates of the licence, establish an effective way to monitor and assess the treatment and care they are providing.

This is a pioneer effort we are undertaking here in Ontario. It represents the first legislative approach anywhere for the regulation of community-based facilities. A few states in the United States have legislation for regulating single-purpose clinics such as surgi-centres, but none has even attempted the comprehensive legislation we are moving towards.

This legislation is unique in another respect. Following introduction of the bill on 2 June 1988, we have undertaken extensive consultations with individuals as well as professional organizations and associations. This dialogue has resulted in our introduction of many amendments. They have been reprinted, as you know, in a revised format and have been made available to those requesting to appear before this committee.

I believe very strongly in the objectives of this act. All those we have consulted with have also shown their strong support for the objectives and the overriding principles of this legislation. We believe our proposed amendments will allow us to achieve these objectives and I look forward to the dialogue, discussion, debate and important work of this committee over the next few weeks.

I believe it is important at the start of these hearings for you to hear my commitment to listening to the presentations that are made and to ensuring that this process is as productive as possible. As I turn the session over to Dr Bob MacMillan, who is executive director of the health insurance division, I want you to know that I will be listening. When I am not here at committee, my parliamentary assistant, Ken Keyes, will be here.

We consider the work this committee is doing and the presentations that will be coming before it to be important and significant parts of the legislative process as we develop a piece of legislation that will achieve the objectives and principles that I think have been clearly stated. I make the commitment to all of you that the work we are doing will result in the kind of framework legislation that will help lead us into a safe and confident health care future.

I would like to turn the proceedings over to Bob MacMillan.

Dr MacMillan: Thank you for giving us the opportunity to give you this briefing and to try to let you understand the details of this, on the surface I think, complex bill. What it is trying to achieve is really a rather simple objective. That, as the minister has said, is to become a partner in the expenditure of our health care dollars and to see that the money is spent in a very cost-effective manner, with the ability to assure the public that it is also being rendered with the same quality as has traditionally been done.

In addition to Gilbert Sharpe, I will take the opportunity to introduce Rebecca Gotlieb immediately behind Gilbert, who is counsel with Gilbert in the legal branch of the Ministry of Health. My right-hand person is Marsha Barnes who is probably the most knowledgeable person about this act. All of us would



like to be a resource to you, any of the committee members, in clarifying details or providing you with information.

My part with this act came when it was originally being discussed. Because of my past history, which includes a 16-year practice in the field of general practice as well as being a past president of the Ontario Medical Association, I was brought into the picture to determine and discuss the impact of the medical profession upon this act and the way it was drawn up. Those initial discussions and concerns led to a very close liaison with the people who are going to be involved and impacted by this bill.

From the outset, even before the day of first reading, we were having discussions with the Ontario Medical Association, which represents the 19,000 members of the profession in this province, along with the Ontario Hospital Association and an association you may have heard of in Ottawa called the Canadian Council on Health Facilities Accreditation, formerly the Canadian Council on Hospital Accreditation. They are changing their name because they were finding that throughout the provinces there was a need to increase their purview in assessment and accreditation of health care delivered, not simply in hospitals but in other facilities that had started to take over some of the services formerly given solely in hospitals.

Indeed, when I graduated, it was unusual to do stitches in your office if you were near a hospital. Why should I? I was not being paid to do them there. Why not take the patient up to the emergency department? Taking moles off, skin cancers and all kinds of activities over the past decade or more has gradually evolved into the office setting rather than the hospital.

There are many advantages to that, both to the consumer who may not have to travel as far and also of course to the provider who cannot leave all his or her duties, but can render that service in the office setting. As the schedule of benefits, the way in which physicians are paid, has gradually, but gradually, coped with this new setting, it has unfortunately not kept up to date with the ability to fund the provider appropriately. So we see physicians wanting to do certain things that are proven to be safely done in the office, but they cannot because we do not have a funding mechanism that allows for adequate compensation.

The example we always throw out is the fact that vasectomies can safely be performed in a doctor's office, and indeed under local anaesthetic, for probably a fifth of the cost of half of the vasectomies that are presently done under a general anaesthetic in a hospital, sometimes even associated with an overnight stay. We are not keeping up with where medicine has gone. By allowing a form for proper and appropriate funding with our ability to plan with providers, I think we can have a proper way in which we can keep up with modern medicine and probably have some cost savings in the long run.

What I intend to do over the next period of time is to give you an overview of the bill. Up until 11:30 this morning, we were still debating issues on this bill, so when you get down to the nitty-gritty there are still some areas to be—

Mr. Reville: You should have got it ready before you came to see us.

Interjections.

1430

Dr MacMillan: There is ample opportunity for debate and contribution. We have left that for some wise counsel around the table. The activity has been interesting, though, and I can say that the bill, as you see as amended, has been a result of a considerable degree of consultation with many providers, both individuals, those who intend and wish to be grandfathered, and those who will be impacted, including many of the professional associations.

For my assistance, not for yours, I have asked Todd, I believe, to run a few slides.

Following this presentation that I will give you—again, these slides are so that I can try to cover most of the areas—Gilbert Sharpe will give you an overview, in particular more of the clause-by-clause aspect with the legal implications. Following that, hopefully before we adjourn today, we will have an opportunity to attempt to answer some of your many questions.

We have not updated these slides in the name of efficiency. However, we have presented this to several groups, including the Ontario Hospital Association at a large meeting. The bill received first reading on 2 June 1988. Second reading, I believe, was completed by 29 February 1989, and of course we are finally into committee hearings. We hope that the proclamation following third reading could be in the very new year. We have a lot of work to do on regulations, work that is progressing very well.

The rationale, I think, as explained by the minister and some of my comments, is to allow for expansion of community-based services. Many of the types of activity we would be able to license under this are for a number of reasons presently only available at the hospital. That hospital, of course, in northern and remote areas, is often not quite as handy as downtown Toronto where such distance is not a barrier. We believe that many of the services that are rendered now in clinics that have been set up more in the metropolitan areas—I am going to give you examples of those shortly—could be rendered in northern communities if the government were able to provide adequate funding and incentive for not only nonprofit groups but also individual physicians and specialists to set up in those more remote areas.

At the same time as these activities are occurring and more and more sophisticated things are being done in the private setting, often because of the expansion of technology, we have not kept pace with our ability to measure quality within the private sector. Indeed, in 16 years of practice, I never once had one single member of the medical profession walk into my office to ask what I was doing or whether I was doing it correctly.

That has changed somewhat inasmuch as the college now has a more regular type of review of quality rendered by individual physicians. But I think in medicine, surprisingly more than in any other profession, a physician is able to carry on for years and years and not be scrutinized by anyone other than his patients, unless he or she is on a hospital committee and where he is on hospital staff and provides services within a hospital.

When you are doing surgical procedures, when you start giving general anaesthetics and you start to do certain diagnostic events that have some risk to them, it is important the public have the assurance that the quality of that service rendered in that community setting has the same assurance it does in our hospitals. Therefore, through very lengthy negotiations with the

College of Physicians and Surgeons of Ontario, I think we have worked out with it, and it is supported by both of us, a method by which people can now be assured of a quality assessment review, mainly spearheaded and managed by the College of Physicians and Surgeons of Ontario, of course under the authority of and with financing by the Ministry of Health.

Probably number three is one of the most important areas for the rationale of this particular act; that is, right now we have to helplessly and blindly, almost, sit back and allow development of any particular type of activity in any sphere of medicine that any physician wants to begin. For instance, if I decided tomorrow to quit and start up a clinic on the corner of Wellesley and Bay, I would have to ask no one. I could start billing and I would be extremely surprised if I were not able to generate at least \$175,000 from the Ontario government by the end of next year.

At the same time, we have not allowed or we have not taken any draconian moves on the control of manpower, and as such, there are ample opportunities for those who wish to dip into the Ontario health insurance plan trough and begin sipping. What is even more bothersome is that in some cases nonphysicians have seen this opportunity for generating income, and in more and more cases are using health care professionals, physicians in particular, in order to generate income for their particular business.

In many cases the services they deliver are justified and needed, but we are seeing more and more the lack of ability of government to become a partner in that planning. All we do down in Kingston is simply write a cheque to whoever bills us, who happens to have an OHIP number, who is any physician who walks into this province tomorrow.

Hon Mrs Caplan: Can I just interrupt for one minute?

Dr MacMillan: Yes.

Hon Mrs Caplan: I know all of my colleagues read my speeches—

Mr Pelissero: Faithfully.

Hon Mrs Caplan: —faithfully. For the members of the opposition, I have been told they do make very good bedtime reading.

One of the things I have been saying is that the Ministry of Health's role is changing. We are changing from simply being the insurance company that writes the cheques to having a very important and appropriate role in strategic planning, program planning and program management. That is what Bob is referring to. This will give us an opportunity to appropriately plan and, in partnership, look at the planning with the district health councils and the management with community groups. I think this is a signal of the ministry's role changing from simply being the insurance company to being very active in strategic management program planning.

Dr MacMillan: The added comment under item three, I suppose, would be the fact that if we fail to recognize that need to become partners in this very expensive type of medical care and health care, then we simply will have our \$13.9 billion to divvy up to whoever happens to send us a bill. We have no ability to shift and to make these cost-effective moves, which we feel would provide quality care to more and more residents.

Take a cataract, as an example. If you have any family member who needs



a cataract operation, you will recognize that because of the demographic changes and so on, we are becoming less and less able to cope with admitting a patient for a few days and doing a cataract operation in a hospital. As an example, I would suggest that, for that operation alone, in many hospitals in Ontario the waiting list would be six months to a year. It is not emergency. In some cases it is not even too urgent, but if you are losing your sight and you are frail and elderly, if the government can afford an opportunity where that particular service can be rendered just as well and much more quickly in a facility close to home, this is the type of activity that we see down the road could be a distinct advantage with this type of legislation.

The fourth item there is the concern over charges to patients. At some point in this discussion, of course, we will be going into—You will recall Bill 94, which became the Health Care Accessibility Act, and the fact that physicians were no longer able to bill their patients for insured services.

Unfortunately, two things happened. One thing, through lack of maybe clear-cut definition, was that more and more physicians decided there were certain administrative charges and certain charges that were not directly related to the particular insured service that was rendered. Therefore, they started, in some cases, to add certain charges for whatever was being done in addition to the insured service.

Then there was another kind of charge that gradually has evolved, and that was a charge for things that supported an insured service. For instance, in the cataract clinic I will often use as an example, why should the doctor be subject to paying for the intraocular lens? That costs about \$400, I understand. Yet, without the ability to garner up that money, he would not be able to operate such a clinic.

So what has happened with the lack of legislation is that in more and more clinics of this kind, in vitro fertilization, arthroscopy clinics, laser treatment, all of these things that were not foreseen in the schedule of benefits had to be charged to someone. We did not have a legislative framework within which to pay and, accordingly, the patient was hit up for the balance.

#### 1440

I suppose if you are thinking about extra charges, whether it be cost as a facility fee, an extra fee or an administrative fee in order to get that service, it is still an extra charge; indeed, in these sophisticated procedures, both diagnostic and surgical, the fees are often \$200, \$300, \$400 or even \$800. So they are not like a \$25 insurance report; they are big charges, often to patients who cannot well afford those types of added fees. The concern over the increasing numbers of charges to patients obviously precipitated some of the thought behind this new legislation.

The objectives were to develop, as I have said, a more community-based health care system. The district health councils, which have often felt somewhat unable to become a real planner in their area, often simply decide priorities and give their list of add-ons to the system. This is probably going to give them a very decided ability to become involved as a real planner in their local community. In fact, the ministry has brought them into the picture from the outset: A presentation was made by some of us to them at their annual big meeting in Ottawa last fall. Subsequent to that, they struck a committee which worked with us. We have contracted out with the University of Toronto to develop how they would make a needs proposal and make recommendations to the ministry. They are very enthused about the ability of



their organization as the local health agency in the community to become a partner in determining these needs, rather than simply having head office do it instead.

Number 2 is to ensure that patients receive the quality medical care I have alluded to. Three is to regulate the facilities, so that they may be established in a manner consistent with a planned health care system.

There are many health facilities out there already: We anticipate roughly at this point, subject to change in the bill, that there may be about 20 facilities out there that will be grandfathered and given some priority in the list of licensed facilities that I will talk about in a minute. But they will be a free-standing health facility. They might be operated by a nonprofit community board. In many cases, especially at the outset, no doubt they will be operated by their originators; often a specialist in medicine, either a surgeon or somebody in diagnostic activity. The services will normally be provided on an outpatient basis, much of the activity that presently goes to hospitals alone. It will be staffed by physicians.

Another unique feature of the bill is that this will give us one of the first big opportunities, other than community health centres and health service organizations, to staff other than just the physician. For many years, ministers have been battered by nonphysicians who wish to get on the OHIP mailing list. Many ministers have tried to restrict the number of add-ons on OHIP, recognizing that it is often volume-driven. It is often that the ministry loses some degree of control over its dollars. There has been an opportunity in the last several years to fund in ways other than fee-for-service, and most of those other professions are indeed covered by that type of funding.

But it is mainly in the hospitals, so for physiotherapists we have restricted licences and very few of them work outside the hospital setting. Psychologists do not bill OHIP and have to rely on some type of funding by salary. Physicians receive their income for their particular involvement in the service. They do not receive any money for their staff. No matter how many staff they have, that comes out of whatever they are able to bill for their services for that particular patient.

In fact, by having a lack of funding, we have been unable to look after the needs of both the providers and, more important, the patients, who often have to go to a hospital to get their physio. If you have had any experiences in your family, often you have had to go for your physio to a hospital, because the funding base is not there in the community. Obviously there is no reason why you have to go to a hospital and tie up services in a hospital when, most often, services such as that can be rendered on a more cost-efficient basis closer to home. So we will have an opportunity in this type of funding, because we will have different ways, through licensure, that we can fund so we will be able to support other professions.

We have found, through our discussions with most of these other professions, that they are quite enthused by this bill and, while they have some reservations about certain areas, they are eagerly awaiting the opportunity for their members to take part in health care in this province other than on the payroll of a big hospital.

Four, they will be funded, of course, by the ministry. We will work out, following licensure, a method of payment. There will be different methods of payment. Part might be a fee for service—we may retain some of that

element—but there may be some of this overhead funding that will take place, including salaries of other health care professionals: nutritionists, dietitians, physiotherapists, psychologists and so on.

The most typical feature of an independent health facility is also that it will not traditionally or routinely be characterized by overnight stays. There is nothing in the statutes you see before you which stipulates that, but this is the general idea, that these are outpatient facilities, in and out the same day. Unless some unique type of activity, such as a birthing centre, requires special consideration, most will be that way.

The list of surgical procedures: I asked for the latest list of the types of things that might be grandfathered just as I sat down here, and I can read to you for a few minutes some of the things that it may surprise you are being done outside the hospital setting. All of this, I can tell you, is within the last five to 10 years; most of this was just not done years ago.

Artificial insemination, endometrial biopsy, cystometrogram, cystoscopy, therapeutic abortion, tubal occlusion, excision of dermoid cyst, excision of malignant lesions, scar revisions, tendon repairs, excision of clavicle; major forefoot reconstruction, reconstruction of tendons, arthroscopy, which is looking into the knee with a scope, débridement of the mastoid area, laser treatment, cataract extraction and the list goes on.

We received from the American Medical Association the list of services that are now endorsed in North America as being done outside of a hospital. It goes on for several pages, and this in the light of most areas in Ontario and indeed in Canada where they are still being done solely in the hospital.

Diagnostic services could include arthroscopy. My wife, who works in an outpatient clinic at the Hotel Dieu Hospital, says it is almost like a circle, the revolving door of people who now are sometimes avoiding surgery to their knee because of the ability to have a 20-minute look inside the knee through arthroscopy. In the whole Kingston area there is no such facility, unless it is in the hospital, which of course adds to the burden of pressure on a hospital which in many cases comes from the outpatient world that has increased so dramatically: diagnostic services including echocardiography, cardiovascular investigations, gastrointestinal investigations, colonoscopies, esophagoscopies and so on, all of these being done normally now in the hospital setting.

Interjection.

Dr MacMillan: From one end to the other, every orifice.

More and more high-tech procedures are coming on stream and we have little ability to fund them other than in a hospital setting. The ones you have read about recently are magnetic resonance imaging, lithotripsy and so on. What others are coming next year? Presently we find it very difficult to find a vehicle for funding these in a nonhospital setting, even though many of the investigations do not have to be in a hospital at all.

Hon Mrs Caplan: That really addresses the flexibility of this act to respond to new technologies as they emerge. The act itself is generic and is responsive to new developments, drug therapies and technologies that can be added to the beginnings of the brief list that Bob maintained.

1450

As you know, I have often said there are three forces for change within the system: economic reality; the demographics of our society, which Bob has addressed; but the one that I think gives us the greatest opportunity is our response to changing technologies and changing practice which results from those new technologies. This bill gives us the framework to be able to be responsive to new technologies, new procedures and the research that is generated as to what can be safely performed in alternative settings.

Dr MacMillan: Obtaining of a licence will be by two methods. One is grandfathering, and of course that has been built into the act to take into consideration those who are already rendering services. That date of rendering the services goes back to 2 June 1988, at which time we determined that those who were offering services wherein a facility fee was being charged would be eligible for grandfathering.

The other class is new facilities which will be either contemplated by individuals, groups or communities or in fact district health councils, which may stimulate interest in a community in developing a facility we have expressed some deficiency in, in that particular area.

The grandfathering would be then subject to this 2 June deadline. They can continue for a year after the act is passed, and that will give us time to negotiate with them over a licensing process and the terms of the licence and the method of funding. During that year, I imagine that those who have been given some indication that they would likely be grandfathered or be considered for grandfathering will be standing at the door of our office the day this goes through, because, as I said, many of them are very keen on getting into this regular form of funding and more complete form of services to the particular thing they are doing.

The decision will be based on many different factors that are determined both by the minister and the district health council, the main ones being the quality of care, the cost of the service they are going to be providing, and the demonstrated need as assessed by the district health council through this rather detailed and accurate way of determining local need.

Following that determination of need, the way these new facilities would be brought on board would be for the Ministry of Health to be shown by the DHC that there is in fact a particular need in that community.

Again, using the example of cataracts, let's say the London Victoria Hospital had a year-and-a-half waiting list for cataracts, and with all the people retiring to London it was quite unacceptable. Rather than the tenders going out and the construction going up and a hospital bed added five years down the road, you could have a licence being issued to several local ophthalmologists who have got together, maybe with a group, a community group even, who are willing to use their operatory in their particular office or clinic and be funded in this unique way in order to take some of the load off the cataract waiting list at the local hospital.

The minister would issue requests for proposals, so although somebody identifies a need—it could be a doctor; it could be a DHC—the minister must then determine that there should be a call for proposals. The minister then, in conjunction and in co-operation, in fact in a joint effort with the DHC, would issue that request for proposals, and it may stimulate activity and interest, it may stimulate the competitive proposal that comes forward that would eventually receive approval.



Before that approval took place, the district health council would be very intimately involved in reviewing and ranking the response. That process then would result in the one with the most merit being chosen.

The licensed facility would then be operable during a period of up to five years. The contract would have conditions of licensure with the negotiated budget, the method of remuneration for physicians and other providers that obviously would have to be worked out in a way both parties agreed to, and the licensee would now be subject to the quality assurance and inspection program that is a part of the bill.

If you have had the opportunity to look, you will see that it has changed considerably in our amended version, and that of course was following negotiation with the profession, in particular with the College of Physicians and Surgeons of Ontario.

Hospitals, of course, were concerned at the start, in particular about what this would mean for them: Is this a transfer of moneys available to them or money being taken away for development of community clinics? Most of us who have been involved with this believe there is some shifting that can occur with funds and moneys to give more cost-effective service to the patients of Ontario, but I think we have to look ahead and realize that we cannot continue to meet all needs simply by plugging more and more money into building more and more big hospitals and more beds. Indeed, getting the best bang for our buck in many of these cases undoubtedly is to provide funding for services that can be rendered in a much less costly atmosphere.

I have talked to many hospital administrators, and taking some load off their outpatient departments will not be a great disservice. The level of quality care able to be rendered to inpatients is often threatened to some degree by the unpredictable load of outpatient activity that hospitals are subjected to more and more.

Radiology clinics: I am sure you are going to hear a considerable amount of discussion about radiology clinics. The Ontario Hospital Association will present grave concerns about the unplanned proliferation of radiology clinics in this province. As for the uniqueness of this particular endeavour, allow me a couple of minutes to explain this. If you are not thoroughly experienced with the schedule of benefits, this will go by you.

It was recognized a long time ago that you cannot pay an ophthalmologist on the outside just to read his X-ray. The film costs too darned much money. You have to pay a technical component as well as a professional fee. So, unlike most services, radiology—or taking an X-ray—and ultrasound resulted in our giving a technical fee to help pay for the overhead of the thing and a professional fee.

Unfortunately, what has happened is an unfettered type of duplication of these clinics and services throughout the province that is just soaking up Ontario health insurance plan dollars like you would not believe. I will show you later in our hearings, possibly, that this has doubled in the last couple of years. We are unable to relate that to a legitimate need. We hope it is a legitimate need, but it does seem odd that in the last couple of years these services have doubled quickly, and mainly through the establishment of private radiology clinics, often across from a hospital.

The OHA is very concerned that this is an area that eventually has to have ministry planning as well. We do not see this act as the route by which



we become a planner in that particular activity, although many of us looked at it, wondering whether or not it would. So there may be some discussion on that, and I know it will be precipitated by the OHA.

What does it mean for physicians? As I have told you from the outset, we have been debating with many physicians and different groups of physicians, most notably the Ontario Medical Association. There were many concerns voiced by the OMA at the very start, many of them on the front pages of the paper. I can tell you that if you look at the amendments and at your press clippings, you will find that most of them have been addressed. We have had very successful discussion and negotiations. While this type of activity by the government was not called for necessarily—and I understand it is a bit unique—I think it has helped and will help you, the committee members, in understanding that a lot of dialogue has been taking place with all the people involved in this. While you are going to hear some areas that are still of some concern, a far greater number of problems have been ironed out.

Mr Reville: If I may interrupt, I am quite interested in this question of radiology clinics and the kind of impact they have had on OHIP payments. Is it possible to provide the committee with additional information? For instance, I recently got a listing of all the OHIP payments by doctor, although I did not know their names. There are some up in the \$4-million range, which I take to be radiology clinic payments. Almost all of the high payouts are indicated as relating to radiology. It might be interesting for the committee, and certainly for me, to have a bit better handle on the problem and any comments the ministry may have on the efficacy of this amount of radiology going on, whether or not it has made us healthier.

1500

Dr MacMillan: Just as a comment on behalf of the profession, you have to be very careful when you look at figures like those, because radiologists, more than any other physicians, tend to bill in groups. It depends entirely on what type of procedures they are doing, because, as you know, a computerized axial tomography scan or a sophisticated X-ray could have a very high technical component because of all the films necessary; for instance, a total body scan.

So they bill for more than one physician and they bill often for things that are very costly because of the cost of the equipment and the film and so on. Indeed, that kind of information should be available to you and we will see that our staff gets that for you.

Hon Mrs Caplan: If there are specific questions of data, it might take some time to gather it together, so if you want to give them to us early on, we will be happy to provide you with whatever information and specifics you require.

Mr Reville: All you can give me.

Hon Mrs Caplan: We will be happy to. I know that the last request, the order paper question, took some time to assemble. We expect to have about four weeks here at committee. So if you have any thoughts of what kind of information might be helpful along those lines, the earlier the request the better.

Mr Reville: I was impressed with how quickly you got me that information, actually. Thank you.

Dr MacMillan: I think it is important to reiterate the fact that the Ministry of Health has no information that there is an overusage of radiology. One has to question, though, why such a sudden increase has occurred in these types of fee-for-service fees. At the present time, the ministry is relatively helpless in being a partner in that assessment.

Ms Hosek: Just as an informational question, is it correct that in order for someone to get radiology services he or she must be referred by a physician?

Dr MacMillan: Yes. On what the IHFA means for district health councils, it will do this needs determination I have told you about. They will request proposals from the community. They will be involved in looking at those establishments that we probably will grandfather, giving us their opinion on the continued need for that service. They will also be involved at the end of the licensure period—which will, as I said, be up to five years—in determining for the minister whether or not there is still a need, and therefore a rationale, to renew the licence.

For the most part, while we have a five-year renewal within the bill, it should be stressed that we simply want to avoid getting into a situation such as the nursing home licensure, which goes on for life and becomes a commodity to be traded. Our five-year renewal will allow us a regular way in which we decide whether or not cataracts still need to be taken out or whether there is some type of new laser treatment, or whatever, which is much more efficient and cost-effective.

The facility fees include, of course, the overhead and operating costs, as I have indicated, staffing costs—we have talked a little bit about that, but often there will be nurse practitioners, surgical assistants and so on; cost of supplies, including implantable devices, namely the cataract; and some of the intravenous equipment that is now put in doubt. Patients can be quite costly; some of the things for cancer chemotherapy; even things like a cardiac pacemaker might eventually be done in an outpatient cardiovascular clinic.

Of course, because of the five-year term we have to consider the capital involved. For many of the grandfathered operations there will already be a facility, because they have already been delivering the service. But for that portion of their activity that we license, we of course will take into consideration the capital costs and the possible loss of licensure in five years, which could be a considerable financial embarrassment if that were not taken into consideration.

Of course then, "health facility" means one "in which one or more members of the public receive services that are insured services and for which facility fees are charged." You will see this definition over and over again. I have not quite committed it to heart.

Mr Reville: Would you back up one?

Dr MacMillan: Yes.

Mr Reville: It does not say what word you are defining there.

Dr MacMillan: "Health facility" is the definition. I would like to underline this because on first blush it can be confusing. You will see in the bill where it is referred to as a "licensed health facility" and then you will see "health facility." "Health facility" means a doctor's office, in simple

terms. So make sure you understand that distinction. In this particular case, I think what we mean is that an independent health facility or a licensed health facility is one in which there are facility fees being charged.

Remember that licensure depends upon whether there is a charge for the service being rendered. If I choose to do a vasectomy in my office and am quite happy with the fee given to me by the Ontario health insurance plan schedule of benefits, I can carry on. I do not need to be licensed. I do not need to ask anybody. I just carry on, but I do not charge the patient any kind of extra fee.

If I decide that is necessary and I am grandfathered, I will be almost automatically licensed. If I decide I want to do that because I think I can do it in my office and now they give a licence for that, I am going to have to go through the needs assessment, with the ministry being a partner with the district health council in deciding whether that is really a necessary additional service to be given in that community.

The fee is in fact that which supports, assists or is a necessary adjunct to an insured service, but not part of an insured service. Let's say that I decide to get into weight counselling. There is a fee for counselling in the schedule of benefits and I can charge for that. But now let's say that I want to have a dietician on my staff because she knows a lot more about nutrition than I do, and then I hire the nutritionist. I cannot pay for that, other than share with her the fee that I would get as a physician. Through a licensure operation like this, one could fund and pay for other support services to be given, along with just the insured physician's service.

For community health centres and health service organizations, you have heard the minister comment that we are certainly going to look favourably to applications by such organizations which now have a proven ability to provide that comprehensive type of service mainly because of their funding mechanism and because many of the CHCs, in fact most of them, as you know, are operated by nonprofit community agencies. Already within that program we have seen expansion into geriatric care and into foot care and so on because of the flexibility of funding. That is the type of flexibility we are looking for so much with this new legislation.

There will be opportunities for other clinics, too. There are many multispecialty clinics in the province that work beside a hospital or down the road where there are often 15 or 20 specialists who would love to do things in their operating rooms if only the ministry would fund them some of the money afforded to the hospitals.

Our response to the hospitals is not that we are suddenly going to close down wing after wing, but that some of the needed expansion that might have been anticipated with new beds and so on might well be handled in the community, often with facilities that have already been constructed and used for certain other things.

Mr Reville: Before you move on, does that imply that there will be a different funding mechanism for CHCs and HSOs from what they currently have, which I understand has been evolving, or is this just for add-ons?

Dr MacMillan: No, I think we would have to look at a CHC with the type of added mechanism that we have in this act—the quality assurance, for instance. If a CHC gets into taking cataracts out, it should have to go through the same quality assurance.



Mr Reville: Right. We have existing CHCs and I am pleased that we are getting more. Currently, they have had a fairly unusual funding relationship with the government. That aspect does not change, I take it.

Dr MacMillan: For the standard services that they have traditionally provided, I think that mechanism would stay the same.

1510

Hon Mrs Caplan: What this allows is for the flexibility of program funding for both CHCs which are now funded on a global-budget basis and HSOs which are funded on a capitation basis. It allows for flexibility of funding on a program when they have applied for and received a licence to also provide a service which would require an independent health facility licence.

The negotiations for method of funding would be negotiated with them as it would with anyone else applying. They already have a funding base for the services that they are providing today. It allows for both flexibility and expansion of their service that they can provide because of the ability to have quality assurance for other kinds of services that they are not providing today because those services are done on an inpatient basis. Is that accurate?

Dr MacMillan: I think so. In fact, it is exactly the same model as if a clinic were receiving fee-for-service money. If, out of a group of 20 specialists, an orthopedist wanted to do arthroscopies and the need was established and so on, we would license for that portion of the activity that was not funded through the normal route.

Mr Reville: Does this mean that you will be reviewing the activities of all the CHCs and HSOs to see if they are currently delivering the kinds of service that would fall under the ambit of this legislation? For instance, there are foot clinics currently in the health centres.

Dr MacMillan: Yes, but remember that this act will usually be for sophisticated diagnostic and surgical procedures. It is not for general care and so on; it is for procedures that are usually done on an outpatient basis in a hospital and have traditionally been done in a hospital. I think the CHC model will still have its own generated activity and will look after medical care as compared to surgical care.

Hon Mrs Caplan: The community health centre model is also quite unique because today it offers access to some social services funded by the Ministry of Community and Social Services. The Ministry of Health programs under the community health centre model are often very unique, because community health centres respond to the specific need of a target community and may include wellness programs and health promotion programs.

Under this act, I do not see anything other than a benefit to the community health centre program. It will allow them, again, to identify a specific need which is presently only possible on an inpatient basis so that they can enhance their service to their specific community whose needs they are serving.

The Chairman: As a follow-up, does that mean centres that do not have the need for a facility fee could be established without being licensed under this act?

Hon Mrs Caplan: We have already established 12 new additional



community health centres in the past year. I expect that process of development will continue. The only time they would require licensing would be if the procedures they were performing were the kinds of procedures that would fall under this act and those that would be provided requiring the kind of quality assurance, either because of technology or because they were traditionally performed on an inpatient basis.

Dr MacMillan: The inspection for quality assurance will be done by assessors. Assessors will be persons who either are members of the College of Physicians and Surgeons of Ontario who are designated by it on our request to go in and assess a licensed facility or in some rare cases it may be that by an agreement between the licensee and the ministry, some other body or person is used to make that assessment. For instance, it might be in the north and there might be a hospital right next door with a quality assurance team and it might be asked to do it, but primarily the college, as it traditionally has, will go into that community setting and assess the quality of care rendered in that particular practice.

The difference from ordinary doctors' offices is that we will now have to fund the college to do this on a much more regular basis. We will also have to help them in their development of standards of practice. It may surprise you that in Ontario there are very few standards of practice. "Standard" is a judgement made by the college in light of activity done by other physicians of a similar breed in the same area.

So, if your hysterectomy rate is about the same and your outcome is the same and so on, you are deemed to be practising appropriately. In fact, the first standard of practice, I believe, set up for out-of-hospital services was for abortion and that has been established and agreed to by the college for some time now. They have agreed to begin to develop standards of practice for other areas such as cataract extraction, arthroscopy and so on; the list goes on. They are already starting to develop that standard upon which to base a benchmark when they go to do their quality assurance in the future.

In addition to that, licensed facilities will be required to develop their own monitoring system of quality. They will not be able to just sit back and wait until the college comes to tell them whether they are doing a good job; they will have to develop, and they will be funded in a supportive way, to look at the assurance, much as it occurs in hospitals where teams in fact now, made up of various health care employees in that particular hospital, will make a recommendation about the care.

The third area is the assessment of quality of care against those standards by the college.

A fourth area that we are working on, although we have not finalized negotiations, will be to involve the Canadian council on health facility accreditation, and that body, formally called the Canadian Council on Hospital Accreditation, as you are well aware, gives accreditation for most of the hospitals in Ontario. It is a voluntary activity that we would probably anticipate would continue on with health facilities, and one that we would support in a funding way through the licensure—and possibly, like nursing homes, even give some kind of a mild incentive financially in order that they become part of that volunteer process. This goes throughout the United States and in many areas and is a very exemplary way in which assurance of quality care is kept.

The director under the legislative power has the ability to suspend,

revoke or refuse to renew a licence. We will get into discussions about that area and the powers of both the director and the minister. The bill will tell you that there is also a person called an inspector. An inspector wears two hats, or maybe there are two different types of inspectors. Again, I am going to take a couple of minutes to explain this, because if you get on the wrong track at the start, it may throw you off.

Originally, we had government inspectors. You will remember the kerfuffle in the press about confidentiality and badged bureaucrats walking into doctor's offices in the private sector. Well, through the discussions with the Ontario Medical Association and the college, we have deemed it appropriate that all these inspectors who may walk into a particular facility that is unlicensed will be physicians or people deemed appropriate by the College of Physicians and Surgeons of Ontario.

So, if I were a private practitioner, if the amendments go through, I would no longer have to worry about some badged inspector coming in and looking through everything, including my patient records. I will know now that if someone comes, someone designated by the college will come in exactly the same way that I am vulnerable to now without this act ever passing.

The other type of inspector is a ministry employee who, through licensure, will possibly go in and inspect the physical plant, who might look at the size of the room, the sterility of the operating room and so on and so forth. So, that type of inspector, which is not a surprise to anyone—those are the types of inspectors that occur in many different areas, such as our licensing of labs, our licensing of nursing homes and so on. It works very well. So the medical profession can certainly rest that their initial concern about the confidentiality and nonphysician types entering private facilities will no longer be required.

Inspection in a nonlicensed facility would be required of course where that facility were deemed to be in breach of this legislation. So that if somebody was being given a bill for \$300 every time they went through the door for some particular procedure, and it was not being paid for by the government, but rather the patient was obligated to pay for it, the government would have the power, through this legislation, to make an inspection of that particular facility to determine whether or not it was in breach of this legislation. Hopefully, with the powers that are built into this bill in addition to the improving record with regard to the Health Care Accessibility Act, this will be a particular type of inspection that will rarely have to be done.

#### 1520

Charging of facility fees in any case will either be licensed or you are in breach of this act. Charges for uninsured services will still be fair game if, indeed, that list of uninsured services which we are now finalizing with the OMA is adhered to by the profession. The legislative powers by the minister, of course, are that she may refuse to issue a licence and she may refuse to renew the licence. You will note through the amendments that that was brought to our attention very vocally by the OMA and others. The amendments that will be put forward by the minister include that appeal mechanism on those two counts to the Lieutenant Governor in Council, to cabinet. The decisions of the director can be appealed, as you see here, as can the decisions of the minister, as I have told you, in the amendments.

Offences I am going to go through quickly. This is simply for your

information at this point. Obstructing an inspector could result in an offence; violating confidentiality could result in an offence. Violating confidentiality is, of course, a bit of a myth because in the present hospital climate, doctors' offices and so on, it is just amazing how rarely that really occurs. I know of no indication that any government official has been charged with violating confidentiality. Of course, in the case of unlicensed facilities it is going to be the College of Physicians and Surgeons anyway which, for over 100 years, have inspected doctors' practices. However, if one does contravene these rules the individuals are subject to a conviction of up to \$5,000 on the first conviction and \$10,000 on the second; for corporations it is \$25,000 and \$50,000 respectively.

To finalize, I just want to touch base with you now on some of the controversial issues, because you are going to hear about them. I will be glad to explain, with the other staff people, how we have addressed some of these. I think the patient confidentiality aspect, to a great extent, has been addressed through the negotiations. The ministerial powers have amendments that, to the greatest extent possible, can subject that decision to challenge. For-profit or not-for-profit is a discussion that could take us a whole day, I am sure. I still have trouble in my own mind really knowing who is for profit and who is not sometimes, but at any rate in the health care sphere I would have to think that most doctors think of the profit side and most of the nonprofit organizations we can think up now are very few. I think the community health centre is one of the very few, other than hospitals, of course.

Regulations: We have not developed all our regulations. We are working on those, and there are many people who believe that there may be too much regulatory power in this bill. The quality assurance: I do not think we have been subject to any criticism that it is too little. The College of Physicians and Surgeons, I can tell you, is entirely in agreement with the way in which we have amended the bill. I think they will have a spokesman here some time during the hearings to portray their views.

Cost-effectiveness: Everyone questions this and no one knows for certain. I really believe that there are many services that can be rendered in the community on a much more cost-efficient basis. Whether or not this stimulates more usage and therefore gets rid of the cost-effectiveness because of the increased utilization—just think of the example, again, of cataracts. Sure, we can provide them on a more cost-efficient basis, but will we be generating that many more cataract operations that it is going to get rid of our profits? These are the questions that become very complex, but I certainly think this bill is moving in that direction.

Whether new money is required I think only time will tell, but that has been a question has come up by many people as we have discussed this legislation.

Walk-ins and diagnostic clinics is an area that again is much like the radiology that I discussed. The number of private walk-in clinics in this province in the last year doubled. There were about 44 last year. We are up to 84 now and we are continuing with an evolution that is becoming of great concern to those who write the cheques. The ability for entrepreneurs to become involved in diagnostic and walk-in clinics is something that in the future we are going to have to address. Again, this bill does not seem to be the one that appropriately captures them at this time.

The last thing I want to mention, because everybody either leaves it off



the list or does not want to talk about it, but I have to tell you about some of the concerns, in my view, that have been raised concerning the abortion issue. There is no question that at the present time Dr Morgentaler and others in the community, in fact, one since the 2 June time, have developed without any ability for the government to be involved whatsoever, the abortion services in particular in Toronto. We have to sit by and if three more started tomorrow, there would be absolutely nothing that the Ministry of Health would be directly involved in in that decision-making.

I think this will allow for proper planning in such clinics. If we are going to have such women's health clinics, we believe that the funding mechanism afforded by this bill will allow that women's health clinic to become much more appropriate for a woman who is seeking advice and assistance when an unplanned pregnancy occurs. Presently, with some exceptions of course, once a decision is made by whatever means that an abortion will occur, it is through the door, down the end of the hall on the left. That may be somewhat of an exaggeration, but there is no question that this funding mechanism will afford women's clinics of that nature to become more expansive with the appropriate counselling, both pre-abortion counselling, nutrition counselling, post-abortion counselling and any kind of psychological services.

All of us are disturbed about the level of unwanted pregnancies and I think this is a bill that really pro-choice and pro-life people can believe is something that will enhance the ability to serve women appropriately, first on the prevention side and secondly on the appropriate counselling before a determination is made on what that particular patient wants to do. While we have been at many forums, we have had very few people who have criticized this bill or labelled it as an abortion bill or anything of that nature. I think this is going to help women in the province. It will afford planning of proper women's services, in particular in more remote areas and in particular will afford the opportunity for patients to receive the medical services required without a \$200 to a \$500 bill.

That is the last area of sensitivity, but I think you will find, as I did, as you work through this, this is a bill which, no matter what your position on abortion, is one that will be good for Ontario.

The Chairman: I believe the minister wished to have another staff person assist in the presentation.

Hon Mrs Caplan: Gilbert Sharpe, the director of legal services, has a very short overview of some of the legal aspects over the course of the next several weeks. I think we will be exploring in detail many of those legal aspects. In view of time and the desire to have some time for questions and answers today and then a determination of whether or not we feel there is a need to meet tomorrow, I am going to ask Gil Sharpe to just give us about a five or six-minute brief overview of the health law component and leave some time for questions and answers today. Both Gilbert Sharpe and Bob MacMillan will be here through the course of these hearings to be able to respond to any of the technical or policy issues or legal issues that arise.

Gil, would you introduce yourself also?

Mr Sharpe: The staff first. Jim Spence is a partner with the firm of Tory, Tory, in Toronto, and Jim has been very helpful in assisting in developing the corporate provisions and amendments in the bill. With the permission of the committee, we are hoping that perhaps Jim can provide a very brief overview of those provisions. He is an expert in the area. In addition,



Rebecca Gotlieb has been introduced, sitting behind me. We also have two law students who are sitting just over to the right, Randy Zlotnik and Paula Schipper. They are also helpful and will continue to be so.

1530

Committee members should have a copy of the annotated bill in the binder, annotated meaning it is not only reprinted with the intended motions but also we have put the motion numbers where we are hoping they will be eventually moved when we get into clause-by-clause. Those numbers coincide with the sequencing in your binders that we distributed earlier today.

What I am hoping to do is very briefly run through the bill and point out where things are to perhaps assist as we proceed through the process. The reprinted bill was widely distributed and I anticipate that many of those who will be presenting before the committee will likely have a copy with them and will be referring to various sections of the bill. As I say, what I am hoping to do in the next few minutes is very briefly run through and highlight some of the provisions.

The Chairman: Carry on.

Mr Sharpe: We will start on page 1. "'Board,' except in section 29a, means the Health Facilities Appeal Board." Dr MacMillan went into some detail on "facility fee," "health facility" and "independent health facility," so I will not belabour the point on those.

At the top of page 2 is "insured service." The definition in clause 1(a), "a service rendered by a physician for which an amount payable is prescribed by the regulations under the Health Insurance Act," is somewhat different from the provision as it appears in the Health Insurance Act. Very briefly, I would like to point out what the difference is.

The original proposal, the original changes to this bill suggested that the definition of insured service under the Health Insurance Act would be altered. We are now proposing that this not be done, so that the definition under the Health Insurance Act of insured service where it relates to physicians—it says "all services rendered by physicians that are medically necessary"—will remain intact. The intention is only to change the definition somewhat when dealing with this bill.

Very briefly, the concept of the bill really focuses on what a facility fee is and facility fees are defined in relation to insured services. It is essential, from a legal perspective, that we have a very clear concept of what services we are dealing with so that it is clear to those dealing with this bill as to what facilities are going to be caught by the legislation. Of course, it is also very important when we are dealing with enforcement.

To the extent that the concept of medical necessity is a bit of an amorphous one—the Health Insurance Act deals with medical necessity but at the same time there is a schedule of benefits. Like any insurance plan, there is a list of those services that are covered. It could be argued that there could be services that are not listed in the schedule of benefits for which the government is obliged to pay under OHIP but that are still medically necessary services rendered by physicians and therefore are still insured even though they are not in the schedule.

It is a very grey area, and as the minister and Dr MacMillan have

indicated, there have been discussions with the OMA to try to reduce the grey area and perhaps amplify aspects of the actual schedule of benefits. But in the interim, for the purpose of this act and in the interest of seeking clarity in the act, we have defined insured services for physicians as those that are prescribed in the schedule of benefits so that there can be no question about whether facilities are caught or not.

"Registrar" means the registrar of the College of Physicians and Surgeons of Ontario." We have a motion, which I expect the government will be moving, to amplify that provision. There were some concerns expressed by groups other than physicians that may eventually potentially be caught by this act that their services should be reviewed by their peers, by their own college. It will be proposed that this definition of registrar be amplified.

Hon Mrs Caplan: This is consistent with some of the discussions that are being undertaken by the health professions legislation review, and also by the fact that in an independent health facility you may well have other professionals and it would be more appropriate for the chief administrative officer of that governing body to be the registrar. That is the purpose of the amendment that will be placed.

Mr Sharpe: I will try to speed things up now. Section 2 on page 3 deals with the exemptions. Section 3 is the general prohibition section, "No person shall establish or operate" and so on. If you look at page 18, subsection 24a(1), this is the inspection power Dr MacMillan discussed. The reference back to section 3 there is apparent, and then the penalty provisions that follow from that.

There is a significant change at the top of page 4 to the section 3 provision. The original bill said that no person shall charge an insured person a facility fee and so on, except as provided in the regulations. It will be proposed in committee in discussions on clause-by-clause that the last "except" part be deleted so that under no circumstances can there be any direct charges made of facility fees to individuals. There has been some amplification of section 3, as you can see.

The provisions go on. Section 5, as Dr MacMillan indicated, is the minister's authority to request proposals, and then there are criteria set out in subsections 5(2) and 5(3) as to a basis for those proposals.

Section 6 deals with the director issuing a licence and the process for that. Then on page 6, subsection 3 is the provision referred to about: "Despite any international treaty...." This is the preference to Canadians in granting licences and the preference to not-for-profit in clause 6(3)(a).

Section 7 is the so-called grandfathering provision. It deals with facilities operating when this bill was introduced for first reading on 2 June 1988, that those facilities will be able to continue to operate for a year.

Section 8 provisions, page 8: the appeal provision that was referred to earlier, the provision of reasons and so on, where the director proposes to issue a licence, those persons who will not be successful, who had responded to the original proposal call, will have the right to appeal. That provision should be read in conjunction with motion 14 at the bottom of page 9, subsection 9a(1). It may be that an appeal process could take some time, and in the interim it is essential that the service for which the proposal call was originally put forward proceed in the community affected by it, so the minister has the authority to direct that the director issue the licence to the successful candidate while the appeal is proceeding.

Section 9 on page 9 is the so-called public interest provisions.

Section 10: "A licence is not transferable."

I will skip through some of these. Section 16 on page 11 is the provision to permit the director to take over a facility where the licence was surrendered, suspended, revoked, expired or whatever.

Section 17 is the revocation and renewal provisions, from which there are also appeals.

Section 18: The minister may direct the director not to renew a licence; this would normally occur where the licence has expired. Again, there is a public interest test. There will be a proposed motion, subsection 4 on page 14, permitting an appeal of the minister's decision to cabinet.

Section 19: The notice of the decision not to renew by the director can be appealed, and this is the provision that allows for that appeal. The parties are set out in section 20.

Section 21 deals with further appeals.

Section 23 is the primary funding mechanism of the bill. "The minister may pay all or part of the cost of services...according to whatever method of payment the minister may decide upon," specific funding mechanisms or global funding, if that is decided. Of course, again looking at the specific types of facilities that will be funded around the province, it may be appropriate for different types of funding mechanisms to be used.

Sections 24, 25 and 26 are the provisions dealing with inspectors and assessors. They are fairly complex. Hopefully, they are well explained in the binders. I do not propose to spend any time now going into the details of that, except to point out in subsection 24a(2) that there is also an inspection provision for the grandfathering facilities. I do not think the slides picked that up; section 24d deals with quality assurance, as does section 25. These are sections 24 and 25 on page 21.

1540

Section 26 is also a new provision dealing with inspections that trigger the registrar, physicians and surgeons process that Dr MacMillan referred to. Section 29a is a new provision that permits persons who in fact paid facility fees to illegally operating facilities to be compensated for those amounts. Bill 94, the extra-billing legislation, contemplates a method by which patients can write in and ultimately be reimbursed; this original bill dealt only with enforcement in terms of quasi-criminal prosecution and penalties. It will be proposed that in 29a there be a halfway measure, a means of compensating patients, where it is determined that they were improperly charged facility fees; and there is a provision there for appeal by the physician or other individual who made those charges.

Section 30 is a provision for confidentiality and privacy, and section 33 has the regulation-making powers. I am sure there will be much discussion about many of those when we get into clause-by-clause.

One final note, to section 34; page 30, the back of the bill. The only provision that now will be proposed to amend the Health Insurance Act is to permit the prescribing of "constituent elements" of services; again, an



attempt to work with groups such as the Ontario Medical Association to clarify this so-called grey zone, where some services may, through negotiation, be added to the constituent elements of insured services so they are part of the insured service, and if patients are billed for those, recourse would be through Bill 94. Those that are clearly not part of the insured service may end up being uninsured services for which patients could be charged, or they could constitute facility fees. Again, if there is improper charging under section 3, the route for prosecution would be under this bill.

That, very briefly, is an overview of the act. I would be pleased, of course, to answer questions of clarification. I wonder if it would be appropriate to ask Mr Spence to come forward for a few minutes to explain the corporate amendments. I have not referred to those, hoping that perhaps he might be given an opportunity to explain the basis for them.

The Chairman: Mr Spence, would you take one of the seats here?

Mr Spence: There are three or four corporate amendments. I will take them perhaps in order of concept, not necessarily in the order in which they appear in the bill. In section 6, which is the section providing for preference to be given to applicants who operate on a nonprofit basis and are Canadian, the question could have been raised as to what constituted control by Canadians under the earlier version of the bill. That question has been dealt with by specifying that it is controlled by Canadians, whether through the ownership of voting shares or otherwise. This embraces forms of effective control that do not necessarily involve holding full legal control through voting shares.

Sections 12 and 13, which deal with changes in control or prospective changes in control for licensees, have been revised by refining a couple of the concepts involved. Earlier, the provision contemplated that there might be a violation of the provision where there was a change in the ownership of any shares in the licensee corporation, whereas the intention is really to ensure that there are no changes of interest that affect the control of the corporation without those changes being governed by the act. So the concept of changes that affect the control of the corporation has been specified and included, and the concept has been defined back in the definition sections, basically to the same effect as the earlier definition; that is, a holding that would enable the person to exercise control over the management and policies of the corporation, or a holding of 10 per cent or more of the voting shares.

There are a few conforming changes: the "voting share" definition has been revised slightly; the definition of associate has been revised to conform, I think, to the Ontario Business Corporations Act to catch cross-holdings between corporations of 10 per cent or more.

I think those are really the principal changes in the corporate control area.

The Chairman: Does that conclude your presentation?

Hon Mrs Caplan: That concludes our presentation.

The Chairman: We now have time for questions from committee members to the minister or staff. I guess we, as a committee, need to decide how long we are going to go today and whether to carry on questioning tomorrow.



Mr Reville: I have jotted down a number of questions that may have been answered in the presentation, but I am not sure.

First, I want to thank the minister and her staff for a mercifully brief presentation. I have sat through some ministry presentations for less complicated bills that were much longer, and I appreciate how economical you were.

Can you tell me whether this bill will have an impact on community mental health programs?

Dr MacMillan: It has the opportunity to become a vehicle through which funding for community mental health could occur. My former responsibility was, as you know, the community mental health programs in the province, of which there are about 500, but it is often money transferred to someone, and "Come back next year and get—"

Mr Reville: In a lot of cases, there would not be insured services involved?

Dr MacMillan: That is right. And their limitation, again, for funding is restricted to psychiatrists, whereas, as you know very well, probably the abundance of psychiatric care or mental health care in this province is rendered by people we now do not have an appropriate mechanism, in many cases, to fund.

Let's pick an example: In the case of a crisis centre that was established with some psychiatric services but needed to be serviced by people who are psychologists, mental health care workers, day care workers and so on and so forth, this could afford an opportunity to support those insured services by virtue of a broader funding base, so I see it as a possible window.

Having said that, there will be many groups, I think, who will come forward to try to get on the bandwagon with this funding mechanism, and the ministry, hopefully with the district health councils, will be looking at what services can be given within the funding umbrella we will have.

Hon Mrs Caplan: At the present time, the acts that are available, the number of funding mechanisms, in a number of ways have really hampered the expansion of community-based facilities in any kind of comprehensive approach. This, I think, responds to one opportunity for us. There are others which have been undertaken to respond to that. Community health centres, health service organizations, the new comprehensive health organizations, are different approaches. They do not deal specifically with services. They have had different rationales.

What this does is allow the focus on service provision for program development. The flexibility this bill offers could well, because of its ability to be refined by regulation, respond to some of those areas where the ministry has had difficulty in the past in being flexible or able to respond to an identified need.

Mr Reville: This is an area we will have to discuss I think at some length, but it seems to me, in view of the fact that the bill is tied to insured services, it still does not give you as much flexibility as you might like, because there are a number of health services which are currently not insured services that you might want to fund that this would not help you with.

1550

Hon Mrs Caplan: As I said, there are a number of initiatives under way. The commitment to community health legislation is another vehicle which will further allow for expansion of community-based facilities within a legislative framework. My approach is to try to make sure that whatever we do is consistent with everything else. As we bring forward, it may require definitional amendment or changes in other pieces of legislation, but I see these as all part of a consistent approach to allow us to both plan and comprehensively develop the delivery of services into the future.

Mr Reville: I look forward to seeing the community mental health legislation soon.

Dr MacMillan, would you provide the committee with the list from which you quoted about the services that currently are happening outside of hospitals and doctors' offices that might qualify for a licensure under this act, just so the committee has that information, all the colonoscopy and stuff you were talking about?

Dr MacMillan: You are asking for what we deemed to be possibly the first crack at a list of people who may be grandfathered, is that right?

Mr Reville: Right.

Hon Mrs Caplan: Actually, I would ask that you go a step further. I think we have a list of procedures presently able to be provided in other jurisdictions because of the opportunity technology allows, even if they are not being provided at the present time in Ontario. Would you like the complete list?

Mr Reville: I would love the complete list. What I am suggesting is that I think it would be helpful to me and to the committee if we had an idea of the kinds of services that are being delivered outside of hospitals in any jurisdiction. If you want to predict what kinds of services might be provided, that would be interesting too; plus also a list of those services that are currently being offered in Ontario that you know of and some indication of whether you think that is exhaustive. For instance, I know of some services that are not well publicized that I expect you know of as well, but I guess there are some limitations, that you may not know of all the services that are going on until the act is in force and people come to you and say, "Okay, I want to be licensed." That would be interesting information.

Dr MacMillan: I think we can provide that. I think at this point a private list to you is appropriate, in as much as we would not want to indicate at this early stage to those who might wish to be grandfathered that we are contemplating they will be, because there are others we contemplate will not be. We will have to work it out, and of course, as you know, the DHCs will be involved—

Mr Reville: You are telling me a lot more than I want to know at this point.

Interjection We can only absorb so much.

Mr Reville: The district health councils are going to be very important in this process. I know the ministry now has a DHC co-ordinator, Mrs Mauro. I am wondering if there was a plan to have Mrs Mauro appear before the

committee to talk about whatever she is doing with district health councils.

I am interested as well in knowing whether there are changes contemplated to the composition, selection and mandate of district health councils. Clearly, this contemplates a change in the mandate of district health councils, or at least expansion thereof. Quite frankly, I am concerned about the ability of district health councils currently to deliver on this mandate. I am wondering if we are going to hear from the ministry as to how you are going to try to support the district health councils in doing this important work.

Hon Mrs Caplan: Actually, I have been discussing with the district health councils the change in mandate over the course of the last year. I am sure you are aware of that discussion that has been undertaken. If the committee wishes to have discussions with Debi Mauro, you can do so either privately or before the committee. We would be happy to have her appear.

The determination has been the involvement of the district health councils and the commitment from the ministry to ensure that any changes that are undertaken will be appropriately supported through that important planning process.

Mr Reville: Mr Chairman, how do you want me to handle that? Do you want me to make a request of the committee that we hear from the co-ordinator of DHCs?

The Chairman: No, I think we will deal with it right now.

Hon Mrs Caplan: Whichever the committee prefers.

The Chairman: The minister has offered to bring Mrs Mauro here. I think it is just a question of when we want to do that. Could she be ready for tomorrow, or do you want to do it at the end of the hearing process?

Hon Mrs Caplan: If you would prefer at the end of the hearing process, since that is a process—

Mr Reville: That would be one option.

Hon Mrs Caplan: Whichever you prefer.

Mr Reville: My guess is that we will have some time during the month of August. It would be really interesting for me to hear from Mrs Mauro about her plans for the district health councils. I do not know what the will of the committee is.

The Chairman: What is the pleasure of the committee?

Mr Daigeler: I think tomorrow would be too early. At your discretion, when the delegation wraps—

The Chairman: I think it is something the minister may wish to be here for and the minister cannot be here tomorrow.

Mr Reville: Why do we not schedule it then at the convenience of the ministry, perhaps partway through?

The Chairman: If an opening appears or—

Mr Reville: Yes, if an opening appears or when we have finished hearing from the public.

The Chairman: Okay; so we will leave it in the clerk's hands to contact the minister and work it out. Any other questions?

Mr Reville: Yes. One of the rationales for the bill is the ability it would provide for quality control of the delivery of services. There are some quality control measures in place in hospitals and I think the CPSO does some kind of random quality control work, although Dr MacMillan was never visited during his practice time. I do not know whether that was good or bad or just luck. I wonder if the ministry could perhaps provide the committee with some written information about how quality control is assured in hospitals and through the CPSO, just for our information.

Hon Mrs Caplan: The College of Physicians and Surgeons of Ontario will be attending the committee.

Mr Reville: I expect they will have other matters to address, though, and will not want to go into a long, elementary explanation for inadequate committee members like me.

Hon Mrs Caplan: I would be happy to provide those.

Mr Reville: If you could provide that information, I would be grateful for it.

Hon Mrs Caplan: No problem.

Mr Reville: The bill does not say anything about capital funding but Dr MacMillan did mention that it was possible to be considered. It says "operating" funding in the bill. How come? I am sorry. Was that circumlocutious enough?

Dr MacMillan: I think it became apparent to us as we discussed with providers that if we continue with the five-year agreement, it is unusual to expect someone to provide a service of five years, in which case after capital expenditure they could be left holding the bag. So if we keep with the five years, which has many benefits, then it would be absolutely a must that we consider some way of looking after assistance with capital. I say "assistance," because often that will only be a portion of what they are already doing with those facilities anyway.

Mr Reville: It sounds like an insurance policy against failure to relicense. Are you going to amend the bill to allow you to do that or do you think you can do that anyway?

Mr Sharpe: As I indicated when I went through the bill, section 23 is the primary funding mechanism. Of course, it is drafted to reflect the cost of services and operating costs. It does not specifically mention capital costs. One might argue that inherent in the cost of service, funding would be capital. My understanding originally was that it was the facility concept that we were going to be funding, more so than actually paying for the structures. So probably the safest measure, if that is the will of the government and the



committee, would be to amend section 23 at the appropriate time to add capital costs to it.

Dr MacMillan: The other reason for some benefit in allowing capital is that in our discussions with some nonprofit groups, they thought it might be quite difficult for them to be able to provide proposals unless we had something built in to assist them with capital from the outset.

Hon Mrs Caplan: The position we have taken is that we are prepared to entertain and discuss how that could be considered as part of the deliberations on this bill.

Mr Reville: What about developmental funding? Look at the other end of that. Let's suppose the district health council found a need, put out a proposal call and somebody came forward and said, "We think we can answer the call if you give us some money to develop a proposal." This has long been a little song and dance of the New Democratic Party, as you know, about community-based facilities needing developmental funding to get organized and figure out how to meet all the requirements of the ministry.

1600

Hon Mrs Caplan: The ministry has had some experience with these kinds of requests from communities and has responded in a number of different ways. On occasion, it has used the Ministry of Health Act. On other occasions, and this is the most recent, on the proposal call for multicultural nursing home beds, it went through quite an extensive development of an information booklet on how to apply, what the expectations were, and held public information forums and sessions so that expensive consultants would not be required.

With community health centres, a number of organizations came forward with those kinds of requests, and the ministry in fact facilitated and supported groups that were looking to develop by putting them in touch with other groups and so forth. So I do not see that it is a difficulty. There are a number of different approaches to make sure people have the information they need so that they can apply. It is something we are sensitive to. Bob, did you want to add something to that?

Dr MacMillan: Just that I think within the last year, if my memory serves me, community health centres now do have access to funds for developing projects, as you are aware.

Mr Reville: But this bill does not talk about it and that was my question.

Dr MacMillan: No.

Hon Mrs Caplan: As I say, as far as a mechanism is concerned, it is not any specific piece of legislation but in fact the policy and the availability under the Ministry of Health Act to be able to do those sorts of things in a more generic form.

Mr Jackson: If I might have a supplementary, a good example would be northern Ontario where you are having enough trouble getting the personnel to locate there. Under a DHC model, they will determine the need, but they are not getting much uptake, let alone determining who is going to pay for

developing a proposal and then finding the principals to put the whole package together.

Hon Mrs Caplan: As I see it, that is part of the request for a proposal. If there was difficulty in soliciting responses or—

Mr Jackson: Developing responses is what we are talking about.

Hon Mrs Caplan: —or developing responses, the opportunity is always there to look at what mechanism is appropriate in that individual case. As I say, I think the best example was the determination on the proposal call for multicultural communities, which had a lot of concerns about how to apply for the bed awards. The process that was developed there was, I think, very appropriate in that circumstance and is very different from the community health centre developmental process.

Mr Reville: Thank you for your help, Mr Jackson, because one of the other concerns I have is that presumably any of us who has travelled in the north or talked to people in the north could develop a list as long as his arm about needs that people have in the north. Does the ministry have some planning goals or targets for northern Ontario? Will those flow out of the DHCs? I do not know how many DHCs you have in the north exactly. Maybe Mrs Mauro will tell me that.

One of the concerns I have about this bill is that as you read it, as fascinating as it is, it does not have principles attached to it particularly; it has mechanisms. It does not indicate what you are trying to achieve particularly. One wonders where that piece is in the system, the goals you would have that this legislation might help you reach.

Hon Mrs Caplan: The responsiveness to northern Ontario is one of the features, and I mentioned that in my opening remarks. There are a number of opportunities we have to be able to ensure that the ministry is as responsive as possible.

As you know, we have just announced the establishment of a northern health office in Thunder Bay, as well as the appointment of a northern health co-ordinator who we are presently recruiting. The northern health manpower committee will give us the expertise and advice from individuals right across the north, as well as the two subcommittees, one from the northeast and one from the northwest.

As well, the district health councils throughout northern Ontario will also be able to advise us on meeting the geographic remoteness and very special needs of the north. As you know, the underserved area program has a number of programs under way and we have spent a great deal of time, in estimates and in questions in the House on a number of occasions, discussing the challenges of meeting those needs. I think we have in place the vehicles, if you will, for that kind of input to make sure that the sensitivity and the responsiveness is there.

What this bill will give us is what we do not have in place now, and that is the flexibility to be able to respond to some of those challenges in a legislative framework that will allow for the funding, planning and quality assurance in a community-based facility for those kinds of services that are only permitted on an inpatient basis.

As I understand from my discussions with Dr MacMillan, one of the interesting things, for example, is that this bill would permit the kind of mobile service we sometimes see in other jurisdictions. I know in the north there are some examples, the dental coach and the eye van, that are quite restricted in the services they can provide right now. Because of the quality assurance aspects of it, this would give us comfort that quality services were being provided as close to home as possible for northern residents.

Mr Reville: I have a few questions. I might as well just throw them out and then you can have somebody else.

The Chairman: I have both Mr Jackson and Ms Poole with their hands up. Are they supplementary to what is being asked now or can you wait until Mr Reville has done his two or three?

Ms Poole: Do you want to wait?

Mr Jackson: We can wait.

Mr Reville: I do not expect answers to this just now, but I wonder if there are answers available. It is related to the administrative costs of the bill.

For instance, I would be interested in the projected cost of the assessment structure; the size of the assessment establishment and the same for inspectors; the cost of helping to develop standards of practice; the cost of the incentives for voluntary accreditation, that is, what it would cost the government to administer this bill; any information the minister might want to provide as to the amount of money she believes will be available to fund independent health facilities and where in the budget that would be found.

Hon Mrs Caplan: Over what period of time?

Mr Reville: I do not care. Five years, ten years, ten minutes; \$850 million? I could go higher. And whether or not an evaluative mechanism has been contemplated for how well this works. Are you going to answer any or all of those later?

Hon Mrs Caplan: We will answer them in due course if that is all right. They are an exhaustive list of questions and—

Mr Reville: I can give you a list of this later.

Hon Mrs Caplan: I am sure that over the course of the hearings many of these questions will arise, and some we will attempt to answer. As to the rest and others, if it is all right with you, Mr Chairman, we will present some written or verbal answers at another point.

Mr Reville: The other thing I am interested in—I am trying to keep my asides as nonpolitical as possible. You appreciate the struggle I am having, Minister.

Hon Mrs Caplan: I understand.

The Chairman: You are doing very well.

Mr Reville: What seems to be absent from the bill are mechanisms for community goal-setting and accountability, notwithstanding the goal of trying

to create community care in noninstitutional facilities. What I hear primarily is a geographic criterion. It is not in a hospital; it is on my street.

What I do not hear are the other mechanisms that mean, whatever this does, you know, it provides lithotripsy—I am just saying that because I know Mr Jackson wants to ask about that. Where does the community accountability come from in the legislation? Did you decide to reject that or see that as unnecessary, because I cannot find it in here.

1610

Hon Mrs Caplan: As I hear your question, and maybe I have misinterpreted it, overall, as you know, the government announced its vision and goals in the throne speech. The Premier's Council on Health Strategy has been very important in the development of that vision and of the goals that were determined and ultimately accepted. They are actively working now on objectives. Part of that is the discussions we are having as well with district health councils as the official planning bodies in the province.

All the components and all the legislation, whether we are talking about that Public Hospitals Act, community mental health, mental health legislation generally, give the legislative framework to give effect to not only the principles but the policies, the criteria, by which services are delivered in the province and goals that have been set by policy are achieved.

One of the features I have been discussing is the change in relationship. I mentioned earlier that the ministry's role is changing simply from the insurance company to having, I think, an appropriate and active role in program planning and strategic management. I have also talked about the importance of partnership. You have heard Dr MacMillan refer to that as well: the acknowledgement that everyone in the province has an important role to play. This is but one vehicle for a legislative framework to allow for the health delivery system of this province to respond to changing technologies, to respond to opportunities we see to provide services in alternative ways, and issues such as governance, accountability and quality assurance are important aspects of every piece of health legislation.

Mr Reville: I think we are going past each other a little bit. I understand the vision of the government and largely support it.

Hon Mrs Caplan: I appreciate that.

Mr Reville: I assume that Bill 147 is a strategy to achieve part of the goal, but I do not see the tactics. If you want a health facility that is sensitive to community concerns, one of the tactics would be to develop a mechanism whereby the community is represented in terms of the design, implementation and running of the facility. That is all I am talking about. I do not see any of those tactics included in the bill, that you would elect members or somehow create the accountability and responsiveness that I think you want. I do not see that in the bill and it worries me that it is not there. That is the speech and that was the question.

Hon Mrs Caplan: I know the member's position from another series of questions on governance. While I think we agree on philosophy in a number of areas, there are some areas where we do not always agree. Through the course of these hearings, I think that will become apparent.



Mr Reville: That we do not agree?

Hon Mrs Caplan: There are some areas where we do not agree. I think that is valid.

Mr Reville: I think we can agree on that now, if you want to save time.

Hon Mrs Caplan: I said that health and health services are not apart as an issue, but often the approach to delivery of those services does differ. I know my friend the Health critic well enough to know the direction of his question. He is heading into an area where we have some disagreement.

Mr Reville: Okay. Thank you.

The Chairman: Does that conclude your questions?

Mr Reville: Yes; I am going home.

Mrs Cunningham: My questions basically have to do with the absence of the words "cost-effectiveness" in the presentation today with regard to the objectives. I am assuming that is just understood. There are three objectives of the ministry and of this bill. I am assuming one of the major ones would be cost-effectiveness.

Hon Mrs Caplan: The determination for delivery of services: As we review them, the focus has been primarily on the quality assurance aspects. We know from experience in other jurisdictions that the cost-effectiveness of service delivery in alternative settings is something that can be reviewed and determined at the time the request for proposal goes out. Of course, we always want to make sure that everything we do is not only effective from the point of view of the outcome; but is as cost-effective for the taxpayers as is possible. I think that is understood in the accountability of the ministry; we always attempt to do our planning and service provision throughout the province wherever possible in the most cost-effective manner.

Bob, did you want to add something to that?

Dr MacMillan: No, other than that I think there is a belief on the part of most of us that we would be able to free up some resources for other useful purposes in health if we had a management role in the disbursement of moneys available for such initiatives.

On the single, simple side of it, I think you will hear from Dr Stein, who will tell you how much cheaper it is to do a cataract in his two-storey house on Prince Arthur Avenue or wherever in Toronto than downtown in the Toronto General Hospital. That is a very complex argument, but when you take an isolated service, you can certainly justify a much more cost-effective delivery of exactly the same service that the patient would receive in the hospital. It is very important for the government to be able to, hopefully, free up some of those resources to use where other pressures exist.

Hon Mrs Caplan: My priority is always improving the quality of the service provided, as well. Some of the information which we would be pleased to share with you is from a review of literature in other jurisdictions. There is often a significantly lower infection rate that results from having outpatient and ambulatory procedures available in these kinds of facilities. That is another aspect.

The position I have taken is on advice of people not only from the health care sector but from those in the business sector as well. They have said to me, "Elinor, if you focus on improving quality and you do so by improving management and accountability, cost-effectiveness is always the byproduct."

Mrs Cunningham: If we are talking about management, that leads me to my next question. I am coming to this committee looking at this bill as solving a couple of very important problems in the province. First, when people need a surgical procedure that can be done elsewhere more quickly and safely, then we will get it done. It is annoying to have to wait a year or two for your mother to have cataract surgery in this province with the kinds of services we ought to be able to afford. This is obviously one of the examples you used and one I am aware of.

But I think the second one is that if the public is going to be paying for this—from the explanations you have given us today, my assumption is that the public will be paying for it—then we owe it to the public to do it as effectively and efficiently as we can. Therefore, you are talking about management.

As we see the different definitions, one gets very nervous as one sees the other layers evolving with inspectors and so on. I could go through a few other things; when you are setting up a separate clinic, not unlike a day care centre or other things that many of us have been involved in, you can set up a whole new bureaucracy and start paying for the setting up and running of things rather than direct service to the patient. We always have to be afraid of that.

Leading into the two questions, first, we have examples across the province of where these clinics now exist. So my questions are: what kind of cost analysis has been done there, what have we learned from that and what are we going to avoid as we look at the proposals that come in?

Second, many of us who are involved know that one of the real costs is the use of services over and over again by some of the same people. I am especially referring here to the women's health programs, that particular part. It is certainly not surgeries; some surgeries cannot be done over and over again. So I am looking at the women's health programs here; nutritionists, psychologists and what not. They are now going to be able to be paid for by the public and that is fine; I agree with it.

But if we are looking at cost-effectiveness, just what are we going to do about the tracking of patients and the services that you and I are prepared to provide when it comes to the frequency of visits and evaluation of how far we can go with individuals around some of the problems that we all know are being billed for too many times?

1620

Dr MacMillan: With limited resources and personnel, the ministry staff has gone through some cost analysis with a few of the people we know will be applying for grandfathering. On first blush, there is little question that many of these services are properly funded in that setting as compared to establishing what has been done by those people in a hospital setting. First of all, in many of the types of things being done, I do not know whether the hospitals can cope right now. Second, it is believed in those initial evaluations that indeed they can be done more cost-efficiently.

With respect to using the services over and over, this is one of the benefits of this bill because it is not going to be dependent upon a volume-driven type of service where we never know where patient needs leave off and patient demands start and we never know where physicians' services become generated on the basis of income maintenance. As we allow more and more physicians into this province, that becomes a concern that government should have because there is no turning off the tap at all as long as you allow more and more manpower. Particularly in general practice, and some surgical procedures, there can be a generation of services that is not always directly related to need.

So this funding mechanism can often be in a global way in which you can look at all the services and guarantee people who are working in the particular clinic or whatever it may be an appropriate income without making their income dependent upon generating more and more services, as we have seen with ultrasound and radiology. It is an alternative funding form, which government is on record as trying to encourage, instead of a volume-driven, fee-for-service payment mechanism in every case.

Mrs Cunningham: I asked two questions. One was, have there been any pilots evaluated? The response to that question was I think we were told that the costs are more efficient in some of the existing programs. Am I correct on that?

Dr MacMillan: Not quite, because I do not know what you mean by "pilot." We do not have any legislation and we have no power to go into a doctor's clinic.

Mrs Cunningham: You are quite right. I should not have used the word "pilot." I read it somewhere along the way.

Dr MacMillan: As much as we have been able to get information from people who are co-operating and sharing that with us, we have made some initial assessments. We have not gone into any exhaustive accounting studies because we have not had the power to do so yet.

Mrs Cunningham: But my assumption is you are moving in this direction because you are told that it is more cost-efficient.

Dr MacMillan: We have done a literature search that has supported that view. We have also then talked with a number of individuals to certainly lend belief to the concept of its being more cost-efficient to provide services on an outpatient basis, I underline, because many of the things I mentioned to you often go along with a hospital stay traditionally. These are to encourage one-day treatments without the facility of the institution having to support all the other services. I think we have enough evidence that we are quite satisfied that, other than the volume factor, we are able to provide services much more cost-efficiently in most cases.

Mrs Cunningham: Especially compared to outpatient services in a hospital. That would be a better comparison, given the information you have.

The second question was, what are we doing about tracking patients? I do not think that one has been answered. I know it is probably something that would be of a concern not just to this piece of legislation but it is a wonderful opportunity right now to look at, I think, that particular necessity. I am wondering what has been done about it in the discussions around the writing of this particular bill.



Hon Mrs Caplan: I am not certain what you are suggesting.

Mr Reville: Patient-driven utilization, I think, is what you are on about.

Mrs Cunningham: I am talking about people who move from doctor to doctor, from hospital to hospital and now will be able to move from clinic to clinic.

Mr Daigeler: These are not the cases you have been raising in the House.

Mrs Cunningham: I do not know about any cases I have been raising in the House.

Hon Mrs Caplan: Patients and people in the province have their choice of physician. If they are dissatisfied, they have the opportunity to seek another opinion. They can choose whatever service is provided in the province. I am not really—

Mrs Cunningham: We have letters, as I am sure you do as well, from physicians who advise us of patients who have come to politicians. Basically, they are dissatisfied with their diagnoses; they have moved around and want us to interfere. I do not have a lot of them, but maybe 15 or 20, so that means there must be an awful lot out there.

Usually when we look back at it, phone the physician involved or respond to the letter, we find out that physicians are concerned about patients who are using diagnostic services to a tremendous excess, and perhaps what they really need is some counselling work.

Hon Mrs Caplan: I see the question.

Mrs Cunningham: How do we attract the kinds of persons who, first of all, obviously have a need and, second, for whose need we are paying by allowing them to move from doctor to doctor, hospital to hospital and now perhaps from clinic to clinic? Where is the accountability to the public? That is what I am saying.

Hon Mrs Caplan: I understand the question you are asking. Every diagnostic and laboratory test is ordered by a physician. At the present time, there is no capability to share that kind of information with physicians unless it is offered by the patient. Physicians will usually ask but sometimes the patients, particularly if they are elderly, are a little forgetful. Even in prescriptions and with drugs, one of the things that we know as being of concern is an elderly person on the Ontario drug benefit program visiting a number of different doctors for different conditions, and sometimes forgetting to tell physicians all the pills he or she is on; so that has posed some quality-of-care concerns.

As you know, the Ontario health insurance plan computer is some 20 years out of date. It is 20 years old, and you know how much computer technology has changed in that time. It hoped that in the redevelopment of the OHIP computer, which is under way right now, through the new technologies physicians will be able to have the information they need to be able to provide patients with appropriate care and have, on a confidential basis, access to information about those patients, what tests they have had and what drugs they are on. This, I believe, will result in better outcomes for the patients.



That new system is under development, and Bob is familiar with the work that is being done. In terms of sharing information, probably one of the things I say is that we all have a responsibility. Certainly it is important for consumers or patients. I would prefer the term "consumer" because, hopefully, you can give people a lot of information before they get sick, so that they can be well and have the knowledge to be well. That kind of information for the consumer is extremely important. I believe that knowledge and information are also important for the providers—the physician, the nurse and so forth—to be able to see that a person is treated appropriately.

Bob, did you want to add something to that?

Dr MacMillan: Just quickly, the ministry is obviously concerned, as everyone is, that there may be an element—to whatever extent it occurs—of excess utilization, both on the part of patients and of physicians. To what extent that occurs is being studied by the Scott commission, which is looking with the Ontario Medical Association into ways in which we not only can help to identify that in particular areas but also in which, within a free society and allowing that freedom of choice, we can bring in ways it can be controlled or contained.

I think there are things ongoing which are looking promising. This bill does not do anything specifically to assist.

Mrs Cunningham: Okay. Of course, I was aware that it was not specific, but I guess my point in raising it today is that when one is looking at licensing, one is looking at different criteria.

The Chairman: You are leading to another question.

Mrs Cunningham: Yes.

You are going to pay the the Ontario health insurance plan bill. I think that is some of that safeguarding, within communities, of excess use by patients, because that is the only thing I can be concerned about right now; as for others, for example by physicians, I do not know how I, a member representing the public, could determine that.

I can determine the "other" just by the information I get from time to time around the individuals which all of us pass back up to the OMA, and it says there is nothing it can do about it. Therefore, I think it is up to us to do something about excess use by patients when it is brought to our attention. I just hope that while we have another expansion of the system, which I think is a good one and of which I am in favour, we have to make sure that people are using it appropriately.

1630

I can assure you that if you are looking at health insurance where dental fees are being paid and you think that there are certain processes that you can have done—I am talking about teeth cleaning or something more than once a year—they do not pay it. It is not the public's money, but the insurance company will not pay it, and yet the public is paying for these kinds of things.

There are many other examples I can give you, and I am saying we have a wonderful opportunity to do something right now. I think these clinics and the way they are billing and the kinds of things you are looking at ought to be very big considerations.

Take the computer, too. If you are looking at the computerization stuff, this has been talked about now for some seven years. This is not new. In doing some research for this bill, we have been looking at the statement I am making since 1981 and before. It is long overdue if we are looking at cost-effectiveness and therefore, I think, safety to patients too. That is all I am saying.

I was just curious; in the licensing, why did you pick five years? I mean, we do not do that with other people. Why five years? Usually it is a yearly thing. An inspector goes in, takes a look at the processes that you have set up and, year by year, your licence is renewed. You can have this wonderful vision about planning a service that you are going to provide to the public. Why five?

Dr MacMillan: In medical and surgical care, there is a continual turnover of technology and expertise, in which case after several years, often something that was deemed to be appropriate and the popular way of doing something, the most cost-efficient way, is replaced by something possibly more effective.

A good example is cataract treatment, where originally it was taking out the lens, and you had your big thick glass in front of your face. Next it was the intraocular lens, and now there is laser treatment coming on board quickly. I think the five years allows us to not get sunk into a pattern of practice which is outdated and outmoded.

I have mentioned the nursing home example, where the lifelong existence of the licence has left the ministry and the province with some very old and ancient and outdated nursing homes. We do not want old and ancient and outdated medical and surgical treatment. I emphasize again, up to five years is what we would license, according to the desire of both the person being given the licence and the director.

Hon Mrs Caplan: It was also envisioned that in some cases there might be bank financing required and, in order to be able to secure that kind of financing, a reasonable term which would allow for appropriate depreciations, paybacks and so forth. Five years was determined to be appropriate, but it would not preclude the kind of agreement which would allow for ongoing quality assurance inspection often associated with annual renewal. This was more to look at an appropriate term for the delivery of a service where some financing might be required.

Mr Jackson: Surely, Dr MacMillan, you are not going to suggest that you have some sort of study or analysis which would indicate that the lapse time in terms of new surgical improvements is, on average, five years. Quite frankly, the five-year figure is a Department of National Revenue figure in terms of the write-off of the capital purchases of some of the highly specialized technical equipment that these private clinics get into. We might as well call it what it is.

More important, if, for whatever reason, a private clinic goes into bankruptcy, you need up to five years for renewal, because you do not want to be held at bay. You want to continue an existing clinic, get a new provider of the service. The banks will step in. You will be able to freeze the assets but then put a new person in place who can fulfil the unexpired terms of those conditions, because all financial matters would be frozen. I clearly see that as the issue here and I do not see any difficulty with calling it that. Quite frankly, this is a system by which private money is coming into health care

and we are better able to manage it and pay out the expenditure of it; better than a system now where the minister has to come up with the upfront dollars without some of the tax advantages for transferring and funding those largely expensive items. Lithotripsy is an area which the minister and I have gone toe to toe on.

Mr Reville: Toe to toe?

Mr Jackson: Well, we have.

Interjection.

Mr Jackson: We are not even in the general vicinity biologically. I just wanted to put that on the record, because I do not see anything wrong with what you are doing in that instance, but that is where you come up with your five years.

I guess what I am liking to pursue with the minister in the limited time we have left is to deal with the fact that we are dealing with this bill in isolation in terms of your overall reformation of health care funding in this province and I have an increasing uneasiness about dealing with this bill in isolation of the other elements of your reform package. Therefore, your first response might be with respect to timing in so far as the lead with health facilities in advance of health disciplines and the district health council reforms is concerned.

The reason that concerns me is that clearly, when you study the legislation, you get a sense of where it helps you better administer, which is really what this bill allows you to do. It allows you to better administer under certain financial conditions and quality conditions and you put your criteria attached to it.

Your dealings with the college of physicians have a significant impact on this legislation, health facilities, but they also have a very relevant relationship to the discussions which are going on separate and distinct from anything we will touch with respect to a Health Disciplines Act and the evolving options which your legislation will give you with respect to the role that a DHC has. That is not part of the discussion that we should possibly be having about the envelope system and other things we know are being considered separate by some of the people who are here present today and certainly by yourself.

Could you please respond basically to the issue of timing and why the need to have gone with this one first as opposed to bringing all three together and developing them more as a package, not only in terms of the briefing today but also in terms of how we deal with it as a legislative package of reforms?

Hon Mrs Caplan: I know you have read the ministry's Deciding the Future of Our Health Care document. I think it refers to a number of areas where simultaneously we have undertaken discussions, changes, reforms and so forth. Included in that are a number of pieces of legislation which are under development.

On this one, the health professions legislation review, discussions are ongoing right now. I have told those groups I have been meeting with that I expect the timetable on that to include tabling of legislation, perhaps by the end of this year but certainly next year, if possible. We have talked about

changing of funding formulas for hospitals, negotiations with clinical teaching units—

Mr Jackson: I am aware of all that.

Hon Mrs Caplan: This is just one part of the overall agenda, which was laid out very clearly, and I feel that, given the legislative time frame, it is very appropriate for us to be dealing with this act, which deals with expansion of community-based facilities and a legislative framework to allow us to do that. I see it as part of the overall plan.

Mr Jackson: But in the next three weeks we are going to be hearing from groups who—certainly the college of physicians has calmed down significantly in terms of its concerns about this bill. They have an increased comfort zone with respect to information gathering, with respect to competition, one might argue, with the assessment role and standards of practice. Those have been negotiated and dealt with in respect to this bill, but also we have the Health Disciplines Act, which causes them concern as well.

I noticed in Dr MacMillan's presentation—it was on this business of the rationale for the developing of facilities and planning them and the fact that there has been sort of a vacuum here with not proper legislation—he said nonphysicians were seeing this as an opportunity to expand their business. What concerned me about the doctor's statement was that implicit in that was clearly that nonphysicians were benefiting from the absence of this legislation. I will dismiss that as perhaps his own personal mindset, but I guess what concerns me here is that there are nonphysicians who are very concerned that they have equal access under this bill, and that the primacy to which the Ontario college of physicians seemed to have been able to generate from this minister prior to even getting to this level of public hearings and consultations, they seem to have enjoyed that sort of relationship.

Yet what does that mean for groups like physiotherapists who are struggling in the absence of access to OHIP, but if a doctor wishes to open up a physio clinic, he merely has to make application.

1640

Hon Mrs Caplan: He does not have to make application.

Mr Jackson: No, he can just do it and start billing immediately.

Hon Mrs Caplan: That is under OHIP today. That exists today.

Mr Jackson: That is my point.

Hon Mrs Caplan: This act will not have an impact on that.

Mr Jackson: I know. That is why there is a whole series of groups that are not, per se, physicians, who feel that they wish to provide billable services under this piece of legislation, but that is where the Health Disciplines Act, part of the review as to which groups are going to be allowed expanded access to OHIP is a relevant question for a lot of groups.

Hon Mrs Caplan: The health professions legislative review is proposing a procedural code, a scope of practice and a scheme of licensed acts to allow for the first time some consistency in how professions govern themselves, how they are self-regulated and, in fact, is a new regime in place



at the present time. There are a number of acts which govern professions.

I mentioned the one amendment to the term of registrar. While we want to make sure that anything we do in legislation is appropriate today, we do not want to preclude any of the judgements that may be made under discussions around the proposals of HPLR, which likely will be occurring over the course of time. I said I would hope to have legislation tabled so that there can be full debate, but I believe it would be premature at this time for us to have those discussions about what proposals ultimately will be before the Legislature about the governance of the professions, except to say that this piece of legislation is responsive to changes in technology, responsive to the opportunities of moving services out of the hospital environment into a community-based independent health facility with the appropriate quality assurance in place, which quite frankly does not exist today.

One of the reasons for moving expeditiously with this bill is that there are already some facilities which are operating, providing services in the community where we want to ensure the level of quality assurance, which presently exists in hospitals, and to make sure that we have that in the public interest for the safety of the people of this province.

Mr Jackson: I can give you a specific example. Physiotherapy, which was referenced once before, delivered in the hospital—

Hon Mrs Caplan: That is correct.

Mr Jackson: We want to put it in a clinic so that it can be done less expensively and more accessibly.

Hon Mrs Caplan: There are at present physiotherapy clinics which are licensed by the province and those are in place today. We will be hearing from physiotherapy associations in this regard.

Mr Jackson: Some physiotherapy clinics do not have access to OHIP.

Hon Mrs Caplan: That is correct.

Mr Jackson: Under this piece of legislation only a group of people with OHIP billing privileges will be able to tender for a health facility that deals with physio, for example.

Hon Mrs Caplan: In fact, what this bill envisages in the first instance, and physiotherapy clinics have been licensed for quite some time in the province, and are operating under the fee-for-service method of payment for those which are licensed, this bill envisions procedures, many of them presently available only in hospital, being able to be provided in a quality-assured environment outside of hospital. I guess the difference is that you have selected a procedure which already exists in a community-based setting but which, quite frankly, does not have the quality assurance that this bill will ensure.

Mr Jackson: I do not know if I buy that it does or does not have the quality assurance. My question is—

Hon Mrs Caplan: Perhaps Bob MacMillan can offer that to you.

Dr MacMillan: Just in two sentences. First, my use of the word "nonphysician" did not mean other health care workers. I was comparing it to

the entrepreneur who does not know how to spell the word "health" but knows how to make money. My concern about the nonphysician being accessible to this bill is not as great as yours.

For instance, if I were a physiotherapist who, along with six physiotherapists, wanted to start a sports medicine clinic and I wanted to hire a physician to render the insured service part, I could come and apply or go through a proposal, and as six physiotherapists might be successful in getting the licence to operate a sports medicine clinic. So the licence does not always go to a physician, necessarily; it goes to a service that provides insured physician services and eventually may be insured other services.

Mr Jackson: You are not going to answer the minister's question, but to go back to my statement, maybe I can follow up on that. The concern over physios is that some of the most outstanding physiotherapists, who are extensively used for sports because of their leading work in sports injuries, cannot get a licence to bill OHIP, but there is any number of physicians who see it as a great opportunity to hire them to make money, which is the opposite to what seems to be your concern as a physician. As a politician, I do not take sides in the matter; I just simply observe the event and lament the fact.

Hon Mrs Caplan: This issue was identified, as a matter of fact, by the Scott task force, the fact that physicians bill, under fee-for-service, the physician G code, for physiotherapy services.

Mr Jackson: Can I just ask a simple yes or no question, which I have been trying to get across to you? Does this mean under this bill that there will be physiotherapists who do not have OHIP billing privileges who cannot tender a proposal, but that physios or doctors who can do physio can tender a proposal because they have billing rights? That was the simple question I had.

Hon Mrs Caplan: As the bill stands today, I do not believe there is any intention to grandfather physiotherapy clinics.

Dr MacMillan: I think the answer to your question is that anybody can tender a proposal, whether or not you are a physiotherapist who is licensed to receive OHIP billings or whether you are one of the majority who does not have that right and privilege and is employed in some hospital. You can go as a private citizen, in a group, or whatever.

Mr Jackson: That is what I needed to know. And this will allow them to do that?

Dr MacMillan: Certainly.

Hon Mrs Caplan: If we go out with a request for a proposal for physiotherapy services, then anyone, including physiotherapists, could respond to the request for a proposal. Let me add this: the reason they would not be grandfathered is that under licensed physiotherapy clinics and under the physician-operated services, they do not charge a facility fee. Therefore, they would not qualify for grandfathering.

Mr Jackson: I see the hook there. Okay.

Hon Mrs Caplan: I want to be clear in answering your question, to make sure we fully understand the intent of the bill.

Mr Jackson: Not a problem.

If I can ask you a quick question with respect to the establishing of priorities, and I will bring up the issue of lithotripsy, because we went through this last year and you are now looking at significantly different types of proposals in terms of their structure: essentially the same sort of equipment but a completely different profile and approach.

As I listened to the briefing today, it is clear that, for example, lithotripsy, which is not widely accessible in this province—and we do acquire it from the United States—I would like to get a sense of who will be setting policy in terms of which procedures will be encouraged to be developed quickly because it would be clearly less expensive if we were to have lithotripsy done on an outpatient, nonovernight stay in a hospital, which is done at the Renal Stone Center in Buffalo and which we could do very inexpensively here. You have a proposal to look at. It fits very comfortably within the framework of your bill; in fact, it supports many of the contentions.

1650

But who will be setting those priorities? It is clearly not each district health council. Clearly the ministry has to be saying that when it comes to renal stone disease in this province the new technology with the newest forms of lithotripter is the better way to go than is the surgical route. Therefore, there should be a model similar to the one in the United States where the clinics are operating and there are private moneys to buy the equipment. What your own current OHIP is paying to these clinics in the United States is in part to pay off the cost of that machine as opposed to buying a machine.

I use that as an example, because clearly that is where are along in the loop. So I would like to merge the two. How are we going to get a sense from you of where you are setting priorities for the province, and encouraging tender calls which are separate from what you are doing with existing hospital procedures generally that are already approved and that you are converting over to a health facilities format?

Hon Mrs Caplan One of the challenges we face, particularly when we look at program planning—and this has been one of the recommendations of the Premier's Council on Health Strategy—is: How do we effectively reallocate so that we use developing new technologies to achieve the opportunity that those technologies present to us? We are having those discussions now with the district health councils so we can look at the whole picture on a regional basis.

The ministry, as I think you know, very clearly stated the priority areas; those were announced in the throne speech, the six areas of speciality care. As well, the ministry I think has an obligation to monitor new technologies. We rely on the very best advice from experts in telling us what is emerging, what is developing, but we also want to make sure that in the diffusion and implementation of new technologies they are achieving the results and the effectiveness the opportunities often present.

I would say that is all part of the challenge of responding to new technologies, but to have a system which is responsive to the ability to reallocate, so that services which formerly could only be done on an inpatient basis shift so they can be provided not only more cost-effectively but with

improved quality and more conveniently in an alternative, is one of the opportunities this piece of legislation will allow.

Ultimately, I think the challenge of reallocation is one wherein there is partnership with hospitals. As you know, hospitals will have the opportunity to respond to requests from proposals. The communities will be able to identify needs and opportunities. Once those have been identified, then the ministry can respond. So I see it as a two-way approach: I see the ministry doing its review, looking at provincial priorities; I see district health councils looking at regional priorities; and I see hospitals, seeing opportunities on a very localized basis, working with other hospitals and with their communities to come forward with recommendations for an appropriate shift.

I do not think this should be seen as anything other than an opportunity to respond appropriately to new and emerging needs in communities, based on information coming not only from the ministry but from the communities, the medical experts and allied health professionals as well.

Mr Jackson: I understand what you are saying, but what I am asking you is, with respect to your setting the necessary priorities within the framework of this legislation, we see it very much as enabling legislation, enabling you to do certain things to reduce expense. However, on the issue of new technologies, you become the trigger. You are the one who says, "Yes, it will happen." I am asking you to what extent you are committed to the approach of new technologies versus the existing conversion of procedures. To me, a lithotripter is a classic example.

Hon Mrs Caplan: I would take it a step further. The step I would take it to is that as we look at our vision and our goals, the health status of the population becomes extremely important, as well as the opportunities to improve health, health service and health care in monitoring the outcomes, the results from the uses of these new technologies.

In Canada we were very fortunate, because it took us a little longer to approve thalidomide so we did not have that unfortunate result to the same degree as our neighbours to the south. One of the opportunities that appropriate evaluation of new technology allows is for us to make sure we evaluate that new technology on the basis of results and outcomes and that we use it appropriately to achieve the best health and health care outcomes for our population.

Mr Jackson: I will finish this way. Every district health council in this province does not need a lithotripter, but the province badly needs additional lithotripters. The arguments can be clearly presented to you as to how much money the province can save, not only from the moneys we spend in the millions of dollars sending cheques to the United States every year for lithotripsy services, which could be spent here, but also from the millions of dollars that are spent on extended hospital stays, because the procedure can be done in a nonpercutaneous process. You do not have to pierce the flesh and keep people in beds, bandaged and sutured.

Yet the only person who is going to decide that we are going to expand that is you. It is not going to be every DHC in this province saying, "We want a lithotripter and we'll let the minister tell us in two years which is the lucky recipient." Clearly, that direction has to come from you. It is separate and distinct from reducing the cost for retina transplants or for any of these other kinds of procedures which are currently being undertaken in a very



expensive environment, in a less cost-effective but equally quality controlled environment. I am talking about who is going to be the trigger for that.

Hon Mrs Caplan: I think the example you have used is a very good one.

Mr Jackson: I know it is, and the proposal is on your desk. That is what I want to know.

Hon Mrs Caplan: As we trace the history of the implementation of new technology for treatment of kidney stones—I am not the medical expert; I will yield to Dr MacMillan, and please jump in, Bob, if I miss anything on the line of how this evolved. But prior to my arrival at the ministry, this new technology was determined to be of interest and worthy of evaluation. The minister of the day established an advisory committee which recommended that one machine be installed at the Wellesley Hospital, that it be evaluated for a period of two years—

Mr Jackson: Neither of us needs to go over the history of lithotripter development.

Hon Mrs Caplan: I think it is important, because the diffusion of new technology is based on effectiveness.

Mr Jackson: I simply asked you where the trigger is for new technology. I do not see it in this bill anywhere. That is all I am asking.

Hon Mrs Caplan: This bill is not procedure specific. This bill allows for any expert to bring to the attention of the minister, district health councils and the public—

Mr Jackson: To the minister's attention. We are getting somewhere, because that is what it said of the expansion. So a new technology, a new procedure, will be brought to your attention as a facility's request.

Hon Mrs Caplan: Perhaps the facility's request, perhaps not. Certainly it is just brought to our attention. As former ministers have done, advisory committees are established to advise the ministry on the value of new technology. Often literature reviews are conducted. Certainly, the ministry is gathering information all the time, not only on developing new technologies but also on the effectiveness of existing technologies as well as new drug therapies. The Drug Quality and Therapeutics Committee, for example, looks at new drug therapies which are brought forward.

I guess I see it as an open process where people always bring to our attention new ways of doing things. These are rapidly changing times. We want to be able to respond appropriately, and then the minister is held accountable in the appropriate forum for the decisions that are taken.

The Chairman: Members of the committee, this concludes the ministry presentation and questions. No doubt members of the committee will have an opportunity to question the minister and the ministry following our public hearings.

We will be commencing our public hearings on Thursday morning at 10 o'clock. I think all members of the committee have a schedule of the proposed delegations appearing before us. In the past, this committee has had a pretty good reputation of starting those hearings on time, at 10 o'clock in the morning and two o'clock in the afternoon. I would request that members try to

accommodate that for the sake of the delegations, some of whom are coming long distances. As well, we have had an understanding that even if we do not have a full complement of the committee with representation of opposition members, we have always had good co-operation from opposition members with an understanding that we start, in deference to the delegations, as close to the starting time as possible. Can I go with that understanding again? Thank you very much. We will see you here on Thursday morning at 10 o'clock.

The committee adjourned at 1701.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
INDEPENDENT HEALTH FACILITIES ACT, 1989  
THURSDAY 10 AUGUST 1989  
Morning Sitting





STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

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Substitutions:

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Eves, Ernie L. (Parry Sound PC) for Mrs Cunningham

Pelissero, Harry E. (Lincoln L) for Ms Poole

Reville, David (Riverdale NDP) for Mr Allen

Smith, E. Joan (London South L) for Mr Beer

Also taking part:

Cunningham, Dianne E. (London North PC)

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Physiotherapy Association:

Johnson, John, President

From the Ministry of Health:

MacMillan, Dr Robert, Executive Director, Health Insurance Division

Sharpe, Gilbert, Director, Legal Services Branch

Keyes, Kenneth A., Parliamentary Assistant to the Minister of Health (Kingston and The Islands L)

Caplan, Hon Elinor, Minister of Health (Oriole L)

From the Ontario Medical Association:

Thoburn, Dr Michael, Board of Directors

Teal, Dr Patricia, Board of Directors

From the Ontario Chiropractic Association:

Taylor, Dr Lloyd

Haig, Dr Robert D., President

Individual Presentation:

Meloff, Dr Keith

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday 10 August 1989

The committee met at 1008 in committee room 1.

INDEPENDENT HEALTH FACILITIES ACT, 1989  
(continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chairman: This is a meeting of the standing committee on social development convened to consider Bill 147, An Act respecting Independent Health Facilities. Today we begin our public hearings, having concluded the ministry presentation on Tuesday. With respect to these hearings, delegations are scheduled for most of the day.

The time is for the delegations to make their presentations, and if there is time, for committee members to ask questions of the delegations. How that time is split between presentation and questions is up to the delegations to determine. They can use all their time for the presentation if they wish. However, committee members would prefer that delegations leave some time for questions during their allotted time.

Our first presentation is from the Ontario Physiotherapy Association. representing that organization, we have Ms Signe Holstein, executive director, and John Johnson, president. Would you take the seats across from the chair.

You heard my opening comments. You have one half-hour to use as you see fit for presentation and questions from committee members.

ONTARIO PHYSIOTHERAPY ASSOCIATION

Mr Johnson: Good morning Mr Chairman, Minister and committee members. My name is John Johnson, as mentioned. It is my pleasure to be here this morning to express the views of the Ontario Physiotherapy Association. I am the president of that association and as such I am representing 2,900 practising physical therapists across the province.

The Ontario Physiotherapy Association wishes to take this opportunity to present its views on the government's proposals to regulate health facilities as outlined in the Independent Health Facilities Act.

To begin, the Ontario Physiotherapy Association supports the principal objectives of the bill, namely, exerting reasonable and effective control over the proliferation of entrepreneurial and largely unregulated health care facilities, also ensuring the establishment, location and services provided by the facilities to meet community requirements, and generally ensuring that the province's health care resources are used effectively and efficiently. There is no doubt in our minds that these objectives are laudable.

What concerns us is that the government has used what we would

characterize as a shotgun approach instead of a targeted approach to meet these objectives.

Let me explain: Bill 147, as we understand, was originally aimed primarily at noninstitutional medical facilities. The bill, as drafted, however, would apply to any health care professional whose services are covered fully or partially by the Ontario health insurance plan. This includes many physical therapists. We are concerned about the enormous regulatory burden this broad scope will impose on the government and therefore the ability of the government to perform the licensing function effectively in response to community needs.

Partly because the scope of the bill is so wide, the bill would grant huge discretionary powers to the Lieutenant Governor in Council and to ministry officials. The administrative discretion would cover matters such as facilities or services covered by the legislation, the quality and standards of the services provided, the process for submitting proposals, the qualifications for staff and employees, the construction, location and equipment to be used in such facilities, the books, records and accounts to be kept and their form, governing access to patients records, and on and on.

We are concerned about the potential for arbitrary treatment and particularly changing requirements due to these wide discretionary powers. We are concerned that they will encourage the development of yet another level of bureaucracy in health care delivery.

The Chairman: Could I interrupt? I apologize. I am just wondering. Do you happen to have a copy of your brief for the clerk?

Mr Johnson: I am sorry.

The Chairman: Do you have copies of the brief for members?

Mr Johnson: There were some circulated.

The Chairman: Okay; thanks.

Mr Johnson: Mr Chairman, do you have a copy?

The Chairman: I do not seem to have one.

Mr Johnson: I have two extras here.

The Chairman: Thank you.

Mr Johnson: Should I continue?

The Chairman: Yes; carry on.

Mr Johnson: We are concerned that the impact may be precisely contrary to the bill's objectives. These provisions will stifle rather than encourage effective and efficient community-based and community-responsive noninstitutional health care.

Finally, we would like to point out that the recognized health care professions in Ontario are already regulated by regulatory bodies that have a wide and effective administrative discretion to set standards of competence, practice and discipline. In fact, the government is reaching the final stages

of a process that has already taken more than six years, the health professions legislative review, to update and to improve the legislative and regulatory framework for each of the 21 health care professions.

As a matter of principle, we believe that the standards of service, competence, discipline and control over the evolution of the profession are best left to their individual statutes and their individual regulatory bodies. Given this background, we are concerned that Bill 147 encroaches significantly on the territory that should be left to the individual statutes and regulatory bodies. We are concerned that health care professionals, under their own act and under Bill 147, will be victims of overregulation, including regulations that are duplicative, inconsistent and perhaps even in conflict.

Again, we think it incumbent on the Legislature to indicate clearly that the individual statutes and regulatory bodies for each health care group have precedence over Bill 147.

On the matter of how our health care professional group, physiotherapists, are directly affected by Bill 147, we remind the committee members that physiotherapy services are provided in the community in a variety of facilities, with and without government funding. Although this bill was originally directed at medical services, the Ontario Physiotherapy Association is concerned about how the bill may impact on our members' ability to provide a necessary service to the citizens of Ontario.

Physiotherapists are skilled, primary-contact health care professionals who are legally responsible for their own patient evaluations, treatment decisions and actions. As such, physiotherapists are required to (1) assess appropriately and establish a clinical diagnosis before treating; (2) refer to another appropriate health care provider if necessary; (3) choose the appropriate treatment, reassess and alter treatment as required; (4) determine the need for treatment, frequency of treatment and alter or discontinue treatment as warranted; (5) provide appropriate patient instruction and counselling; (6) communicate with other members of the health care team.

Well educated in treatment methods, patient education and health promotion, physiotherapists have an important role to play in any community-based health care system. The OPA recognizes that the Independent Health Facilities Act may create additional opportunities for the provision of physiotherapy services in the community. We believe these opportunities should be available to physiotherapists where need is identified in the community.

However, experience with entrepreneurial strategies in the past has identified areas of concern. At present, facilities are operating and purporting to provide physiotherapy services without appropriate qualified personnel. We do not believe that the appropriate standard of care can be provided, nor can it be monitored, when provided by nonlicensed personnel. The OPA would urge the government to ensure that appropriate standards are set and enforced in this area.

We would also urge the government to ensure that the independent health facilities have a representative on the board or management team that manages the facility so that all professions involved in the provision of care to the patient provide input to the overall management of the facility. We believe this will enhance the quality of care provided through communication and collaboration and go a long way towards maintaining the professional standards set by the appropriate profession.



At the same time, the association recognizes the need for some form of regulation of existing and proposed independent health facilities to control the development of such facilities and to develop new and innovative ways to provide services to the public.

The Ontario Physiotherapy Association, however, is unclear about the long-term impact of the legislation. Definitions such as "facility fee," "health facility" and "independent health facility" are unclear. It is difficult to assess the potential effect of the bill on physiotherapy services provided to the patients in the community clinics and in the private sector and the probability to enhance services to the public.

We have offered comments and recommended changes to the proposed legislation for clarification and with the desire to achieve improved health care in this province.

One of our major recommendations was that in section 2 of the Independent Health Facilities Act, it allow for the exclusion of all health care professionals in their offices of practice. I refer to "health care professionals" as defined in the health professions legislation review. The OPA believes that the regulatory bodies established under the present and anticipated health professions legislation are the most appropriate bodies to set standards of practice and service.

While the OPA recognizes that adequate information should be available to assist in the appropriate assessment of the independent health facility, the type of information required is of some concern. Free access to patient records, including, we assume, the patient's treatment record, could be interpreted as a breach of patient confidentiality. We presume the committee has sought a legal opinion on this matter. Much of the information recorded in these records is provided by the patient and for the express use of the health care professional in diagnosing and establishing the most appropriate course of treatment. This information should not be made available without the patient's written consent.

As well, the assessor's free access to other records relating to the facility and the right to remove the same from the premises is a concern.

#### 1020

As you can see from my remarks today, our concerns are mostly of a housekeeping nature, tidying up some of the proposed legislation and tightening it up in other areas.

The Ontario Physiotherapy Association wishes to commend the government on its initiative towards developing community-based health care services. However, we believe the proposed Independent Health Facilities Act requires further clarification and definition so that the intent is clear and present necessary services are not jeopardized.

This proposed legislation appears to increase the opportunities for community-based services, but clearly, because of the broad administrative discretion granted to the minister, it is difficult to conclude precisely how the act will be implemented and how or to what extent the announced goals and objectives will be achieved.

In principle, physiotherapists are and always have been supporters of community-based health care. Physiotherapists have always been supporters of

the wellness, as opposed to the illness, focus of health care delivery, and we are therefore prepared to be vocal members of a health care team supporting objectives as outlined in Bill 147 for community-based, responsive care.

On behalf of the Ontario Physiotherapy Association, I would like to thank you for your consideration and attention today.

The Chairman: Thank you for your presentation, and as well for leaving some time for questions from committee members. Who would like to start off?

Mr Adams: I was very interested in your presentation. I would like to say that members of your association have been extremely active in my riding in Peterborough and I have been very impressed with how well informed they are about this sort of legislation and other matters that have arisen in the last 12 months.

In listening to what you had to say, I sensed an actual ambivalence in your position. You expressed some concern, for example, about over-regulation at one point, and then you expressed some concern about confidentiality of patient records, and yet you addressed at some length the importance of quality control, the importance of controlling the delivery of health services.

You are talking for your association, but as you know such services are delivered by a myriad of groups in our communities. Would you care to talk a little more about how you see the quality of care that is provided for the public out there in our communities being regulated, monitored, whatever the expression is that you might use?

Mr Johnson: Certainly. I am pleased to hear your comments about how the physios are well informed. We met with the ministry last week specifically about the health professions legislation review and that whole process. We talked about how, over the last six and a half years, this whole process has brought not only our association but many associations along considerably in our knowledge of the system, our knowledge of lobbying and of the political system as it works. Many things have happened during those six years to really change the way professions that are delivering health care across the province look at that sort of thing.

One of the main areas the health legislation review is going to change is the way many of the professions, or all the professions that are going to be under that legislation, are going to have to set up their own colleges, which will be their licensing boards that will be in control of their quality assurance, the provision of care for the patient, any complaints. Their basic objective will be protection of the public, as opposed to an association. Our main objective is the protection of our members, of course.

This year our association is celebrating its 25th anniversary of being a professional association in this province. Physiotherapists across this country have been under an association for 50-odd years, and our board of directors, which is our licensing board, has been established for a number of years and is very well set up to deal with and regulate what physiotherapists are doing in this province.

Under the new legislation, all of the different health care professions will be under a similar type of system, so the public will be well protected by each of the individual regulatory bodies, as opposed to one central body trying to look at 21 different professions and trying to have a full handle on

how these 21 professions should be regulated. I think it is much more appropriate if the individual profession is able to regulate its own peers and take care of it that way.

Mr Adams: Just a short supplementary on patient confidentiality: I can understand anyone's concern about that. It is my understanding that under this act, it will be an offence to breach patient confidentiality. I assume you accept that?

Mr Johnson: Under the act?

Mr Adams: Yes.

Mr Johnson: Our main concern though is that patient confidentiality at this point is basically between the person who is delivering the service to that patient and the patient. Under this act, our understanding is that in fact there will be someone one step higher that can come in and look at any records that are in that facility. If that is not the case, then probably the act should be tidied up a bit, and that is really what we are asking for.

We presume that the government probably is not looking at doing that and probably did not expect to do that, but we do expect that patient confidentiality will be protected. It is a premise that our health care system has been based on for years in Ontario. We presume that will continue. We would just like to see the language cleaned up to make sure that it is in fact in there.

Mr Adams: I think your presumption is absolutely correct, there is no doubt about that. It will be protected.

Hon Mrs Caplan: Perhaps Bob MacMillan could clarify on that issue the perspective of the ministry of what exists today.

Dr MacMillan: As you know, under the College of Physicians and Surgeons, confidentiality has for maybe 100 years always been the way, where the college has had the right to go into a facility where medical services are being rendered, and that confidentiality is shared with a third party. It is shared with the regulations of the profession.

I recognize with physiotherapists, and so on, that the sharing of information has not been the case, unless there has been a physician's service involved. Is that correct?

Mr. Johnson: Yes.

Dr MacMillan: Okay.

Mr Jackson: Very briefly, Mr Chairman, I am impressed with the brief, in terms of the areas it highlighted, but there are a couple of areas that you could expand on for me.

On page 3, you refer to—I would presume, of course, that you would like to have access to the regulations as quickly as possible to be assured of some of the concerns that you have raised generally, but if you could be a little more specific about the statement on this concept of encroachment, potential duplication and overlap.

It strikes me that you are a unique health care deliverer, in so far as



a major portion of your membership do not have access to Ontario health insurance plan billing privileges, and therefore the concept of a facility fee is not foreign to a whole group of your membership. Yet there are others who right now do not charge a facility fee because they bill directly to OHIP, but they potentially could charge a facility fee under this legislation.

Finally, if you could comment as well on the notion that, who is now going to determine how this bill will affect the overall determination about increasing access to physiotherapy services for Ontario residents, which is a legitimate issue which you have been raising for almost two decades.

Mr. Johnson: At the present time, 80 per cent of our members work in public institutions, hospitals, home care, that sort of thing, and 20 per cent are working in the private sector. Of that 20 per cent, we only have 90 clinics across the province that have the right to bill OHIP at this point. So you are very correct in saying that most of our members at this point are not involved in billing the government, private insurers or the patients directly for their services.

In fact, with the direction of the ministry being to develop more health care in the community setting, we strongly support that idea, because we think that, in the long run, it is going to cost fewer dollars to give a very good service in independent facilities that are set up in the community.

We would like to establish a system where our members can in fact have better access to be able to go out into the community and work in that situation rather than supplying outpatient services in hospitals, which is a very expensive way to provide the service, but overall that is the main way that we are providing outpatient physiotherapy services in this province. Therefore, any types of legislation that we can see or any regulations that we can see that will allow physiotherapists to offer their services out in the community setting would be much to our advantage and much to the advantage of the public, I feel, across the province.

1030

Mr. Jackson: Not to put too fine a point on it, I support the notion that physiotherapists who have not had access to billing privileges will now have that option, but that also implies that some people who do have it now may lose it.

Also a concern I have is that in the final evolution of this, which might be by more clearly controlling the entire market, access could be another form of a financial economy for the government. That is something that is unknown at this point, but potentially within the bill that could occur when you take it outside of the hospital setting and put it in a clinic setting and you regulate the numbers more clearly. That did not come through in the brief, but I am sure that is a matter that is of concern to you.

Mr. Johnson: Maybe Dr MacMillan can help us out with this, but I understand at the present time there is no increase in the number of physiotherapists, and for that matter facilities, who can bill OHIP. It has been stopped since 1963, in fact, so the potential for more facilities that would be able to go out into the community and bill the OHIP system is not there at the present time. We would certainly like to see it there, but we are not getting the indication that probably will happen.

At the same time, there are other systems that physiotherapists can go



into the community and work under, such as third-party billing or direct billing to the patient, which are all potentially there but all could potentially come under this system eventually, as I understand it. I would ask Dr MacMillan to clarify that.

Mr Jackson: I doubt seriously if you are looking at a partial payment from OHIP and a partial financial contribution from a citizen, which is one option which is used, but I am sure that is not in the government's planning.

Mrs O'Neill: Thank you very much for a very thorough brief. I am from Ottawa. I also have had quite a few physiotherapists, I guess on both sides, both institutional and those who are practising in the community.

My question is: Of those who are practising in the community, the 20 per cent, do they tend to have a specialized clientele with a specialized service or are they for the most part serving general needs as are served in the outpatients of an institution?

Mr Johnson: Generally, the outpatients being treated in the facilities in the community would be orthopaedic-type injuries or soft-tissue-type injuries. There are some specialized types of treatment facilities that are set up in that situation, but very few, other than the ones that are treating basic orthopaedic and soft tissue injuries. That is the basic area.

One area that is really starting to develop right now is the area of treating sports injuries. Again it is a soft tissue sort of injury, but it is something that needs an immediate care situation. A sports injury often cannot wait for a number of weeks. If you put them into an institutional setting, they may well be put on to a waiting list for four or five or six weeks, which is unfortunate.

Mrs O'Neill: In your profession, would you be able to specialize in that kind of thing in your training?

Mr Johnson: I think quite appropriately, yes. We do at the present time. Unfortunately, we are in a situation where we have to provide it in an institution as opposed to what could be a much more effective community-based facility.

Mrs O'Neill: My final question is: With Bill 147 do you see rather rapid increases to a more community-based service in your profession? You have talked about cost-effectiveness, which we are all interested in, that being one consideration. You have mentioned others in your brief, but do you see that happening quickly or not so many people interested in going that route, I guess is what I am asking?

Mr Johnson: I think at this point our members are definitely ready to go that route. We have been discussing this for a number of years. We are now at the process where we are teaching our members through brochures, through pamphlets, through in-services and through full-day seminars how to set up a private practice, how to establish themselves in that sort of situation, so that we are prepared to be able to do that. We think we can offer the public a much better service, a much more efficient service, doing it that way, so we are prepared to work with the government to establish community-based facilities.

Mrs O'Neill: Thank you for the positive tone of your answers and your brief.

Mr Johnson: I would like to mention one other thing. Our national office is just going to move to Ottawa, so we are going to be setting up in your area.

Mrs O'Neill: It might even be in my riding.

Mrs Cunningham: I am interested in the statement you made on page 11 of the brief that we have.

Mr Johnson: I am sorry, I have given away both of my briefs.

Mrs Cunningham: Then I will read it.

Mr Johnson: Okay.

Mrs Cunningham: "Qualified personnel are being replaced by other, nonlicensed health care workers such as 'athletic therapist' and 'kinesiologists.'"

My question is, are there enough physiotherapists in Ontario to perform the procedures that people are needing right now?

Mr Johnson: In the past there have not been. We have been working both with the Minister of Health and the Minister of Colleges and Universities and there has been some movement in the very recent past. Whereas some of the physiotherapy schools have been expanded, and are expanding over the next several years, there is a new program that has been established in Ottawa. It will start producing physiotherapists graduates in another year. They are now in the third year of a four-year program.

So we are in a process right now where we are setting up a system where manpower needs are going to be better met. We have to continue to look at that system, though, and develop more areas that physiotherapists can be graduated from. We have to get more university programs or expand the university programs that are at present available.

Mrs Cunningham: With the government's intention of putting tremendous weight on the importance of prevention in health, do you feel that the numbers we could graduate or have working in the field of physiotherapy could take care of the work that is now being done by other nonlicensed persons, such as kinesiologists? How does one balance, when one is looking right now to emphasize prevention and still have enough professionals out there, licensed or unlicensed, to do the work that the public seems to be demanding?

Mr Johnson: For the most part, through our whole history, physiotherapists have been very interested in prevention. We are not a profession that would set up a patient in a situation where he or she would need our services on an ongoing basis. We try to teach persons how to take care of themselves, how to make it so that they will not have the injury recur or set up a situation where they can live better with the situation they have and that sort of thing. We always have been very much into education, to help persons help themselves.

I think, through that type of system, that we are able to better treat

more people and service more of the public by doing it that way. As for your question about whether we have enough people to deal with that, by changing our systems and involving with the process, I think we in fact will be able to meet much of that responsibility as it goes along and we are willing to change as we go along.

Mrs Cunningham: My final question is in regard to physicians, who are becoming very interested in prevention as well. They are referring many people to clinics run by these nonprofessionals. I am talking about kinesiologists, exercise clinics and those kinds of things now and you refer to them yourself. They are not licensed now and are operating as clinics. They may or may not be billing the Ontario health insurance plan—I do not know that—but I know a lot of people go to them. We have a big job to do here; we are going to have to go out to decide who still operates and who does not.

Are you suggesting that would be one of the services that you would not allow to operate under Bill 147?

Mr Johnson: We have a health care system based on a team approach and we have been team players in that health care system throughout our whole history. I think we can continue to do that, but under the health professions legislation review at the present time there are a number of groups that have not been regulated in the past that will now be regulated, but they will become part of the whole team. As I mentioned in my talk earlier, one of our responsibilities is to refer on to the other members of the health care team as appropriate. We certainly would do that. If there is an area where we feel that one of the other health care providers would provide better service, then it is our responsibility to refer the patient to that professional.

Mrs Cunningham: So you are suggesting that some of these unlicensed people should perhaps be licensed and that this is something the government is going to have to look at. Is that what you said in your response?

Mr Johnson: Not necessarily licensed. In some situations where the individual is not likely to harm the patient, I do not know that licensing is actually necessary. But at the same time they well may be able to work with the system.

The Chairman: This is an important piece of legislation and the committee values your input as part of our deliberations.

Mr Johnson: I think this legislation definitely could affect physiotherapists for a number of years and we really want to have as much input as we possibly can.

1040

The Chairman: Our next presentation is from the Ontario Medical Association. Representing that organization are Dr Patricia Teal and Dr Michael Thoburn.

We have allotted one-half hour for your presentation. Committee members usually appreciate when delegates leave some time for questions as part of that half-hour, but how you divide it up is up to you.

Who will be making the presentation?

Dr Thoburn: We both will, if that is acceptable.



## ONTARIO MEDICAL ASSOCIATION

Dr Thoburn: Good morning. Thank you very much for allowing us to make this presentation this morning. My name is Michael Thoburn. I am a general practitioner from Kitchener-Waterloo and I am the honorary treasurer of the Ontario Medical Association. With me is Dr Patricia Teal. Pat is an eye surgeon and ophthalmologist in Fort Erie. In fact, she is the only ophthalmologist in Fort Erie and she is a member of the board of directors of the OMA.

The Ontario Medical Association is a voluntary organization of 19,000 doctors whose mission statement is, "to serve the medical profession and the people of Ontario in the pursuit of good health and excellence in health care." In keeping with our mission statement, we are here today to offer our comments on Bill 147, the Independent Health Facilities Act.

When the Minister of Health (Mrs Caplan) introduced this bill on 2 June 1988 she said the province must move towards broader based community care. The OMA agrees with the expansion of community-based health-care services. Not all procedures must be performed in hospital unless hospitalization is often desirable from a medical point of view. However, we are concerned that this bill may have the opposite of its intended result and reduce accessibility for the health-care system.

The Ontario Medical Association believes Bill 147 will create a system where patient confidentiality is needlessly threatened, restrict the availability of services in hospitals and doctors' offices, and create a professional environment that will make an independent health facility extremely unattractive for physicians.

We believe that this bill will threaten patient confidentiality through an inspection process that will allow all medical records and laboratory samples to be examined or seized for reasons that are unrelated to the safe practise of medicine. Clause 26(1)(a) would allow inspectors to go into any doctor's office without a warrant to determine whether the doctor is in contravention of section 3 which pertains only to the charging of fees that are related to the provision of an insured service.

While the Ontario Medical Association does not support or condone any physician who is billing inappropriately, we do not believe inspectors who are conducting inquiries into monetary issues should have the power to search and seize patient records and specimens. If a physician is not operating according to valid medical standards, the College of Physicians and Surgeons of Ontario, the CPSO, has under the Health Disciplines Act and will have under section 24 of this bill the authority to enter a physician's office and search and seize records and samples. Therefore, the Ontario Medical Association recommends that section 26 be amended to require that investigations that are unrelated to the quality of health care be conducted under a search warrant.

In addition to threatening patient confidentiality, the entire inspection process appears to jeopardize a traditional role of the College of Physicians and Surgeons of Ontario. Sections 24 to 27 which describe the inspection processes are badly written. The description of the roles of the inspectors, the assessors, the director, the registrar and the distinction between a health facility and an independent health facility are disjointed and confusing.

We note with concern that there is a mechanism in place as outlined in



section 24b and 24c, and subsection 26(1) that would enable the government director to initiate an investigation by the College of Physicians and Surgeons into any physician's office and the registrar of the college would then be required to report his findings back to the government director. The medical profession will regard this as an abuse of the traditional process of self-regulation. Therefore, the OMA recommends that sections 24 to 27 be more clearly written, the role of the College of Physicians and Surgeons of Ontario be re-examined and that the college maintain its traditional role as a self-regulatory professional body.

Dr Teal: The Ontario Medical Association believes that this legislation could result in a reduction of the accessibility of surgical services in hospitals and doctors' offices. Most, if not all, of the procedures that will be performed in licensed facilities are currently available in most hospitals. We believe that the government should increase the availability of these services through independent health facilities, not merely move them out of the hospital environment.

We believe that reducing the availability of procedures in hospitals could lead to the further regionalization of health care. We are concerned that patients will have to travel long distances to receive services that they are currently receiving in their local communities. As an example, if an independent health facility is established in St Catharines, it might be decided that services that are now provided in Welland, Fort Erie, Port Colborne and Niagara Falls would no longer be provided there and people would have to travel to this independent health facility. The regionalization of health care is of great concern to those of us who practise and live in smaller communities. We urge the Minister of Health not to use this legislation to reduce the availability of procedures performed by local physicians in our own local hospitals.

Heightening this fear of regionalization is the issue of funding. We are aware that the government of Ontario is trying to limit health care funding, and we wonder from which current budget the funding is going to come for independent health facilities. It would seem certain that local hospital budgets will be adversely affected by this proposed legislation.

As well as having a potential impact on hospitals, Bill 147 may also reduce the availability of surgical procedures that are now commonly performed in doctors' offices. Some doctors may be charging tray fees for performing surgical procedures such as eye laser surgery or vasectomies in their offices. These fees cover the uninsured overhead component of the surgical procedures, things such as anaesthetics and disposables. These would normally be paid for by the hospital if the procedure were carried out there. Under this act, these fees will be defined as facility fees. They would no longer be chargeable to the patient. A physician who wishes to continue this procedure in his or her office would either have to absorb the overhead component or apply for a facility licence. The reality is that in most cases the physicians will simply stop doing these procedures.

The Ontario Medical Association has attempted to convince the government to include a list of tray fees in the Ontario health insurance plan schedule of benefits. To date, the government has been willing to discuss only a very limited set of tray fees. Therefore, to maintain the availability of surgical procedures done in doctors' offices, the OMA is recommending that the government develop a comprehensive set of fairly negotiated tray fees to cover the costs of procedures that are performed in the office environment.

Dr Thoburn: To this point in our submission we have discussed the impact that this proposed legislation will have on the health care system as a whole. We now turn to the specifics of an independent health facility, and what we have found is a facility that may not provide optimum health care and an administrative process that will make these facilities very unappealing to physicians either as equity holders or employees.

The competitive licensing procedure appears to encourage a minimalist approach in providing health care. We are concerned that the tendering process could result in the awarding of licences to those operators who can provide the most procedures at the lowest cost. We fear this may have a negative impact on the quality of care. For example, aware of the possibility of being underbid, licence applicants may be hesitant to provide a safer but more costly procedure. Furthermore, the operators of an independent health facility might be reluctant to introduce newly developed procedures that might initially be more expensive.

The innovation and advancement of medical procedures and excellence in health care seem to be at odds with a competitive tendering system. We do not think the patients of Ontario should have to accept a lesser quality of care if a safer, better treatment is available, even though that treatment may be more expensive.

#### 1050

The competitive aspect of the licensing process is only the first of our concerns. We are also concerned about the sweeping powers that are granted to the Minister of Health and cabinet. If a licence is refused or not renewed by the director of independent health facilities, the decision can be appealed to the Health Facilities Appeal Board. This seems to be an appropriate process. However, if the Minister of Health decides to direct the director to refuse to issue a licence, subsection 9(5) clearly states there is no means of appeal.

In section 18, if the Minister of Health decides that a licence should not be renewed, the decision can only be appealed to cabinet. While this is better than nothing, which was the case before the government proposed its amendments, it would seem highly unlikely that colleagues of the minister would overturn such a decision.

The power conferred on the minister and the cabinet also creates the possibility of political patronage influencing the decision to award a licence. The Ontario Medical Association does not think partisan issues have any place in determining the delivery of proper health care to the people of Ontario.

Under this bill, present and future ministers of health have a mechanism with which they could arbitrarily shut down independent health facilities. It is possible that health services could be denied and facilities closed by a future administration for reasons that are strictly political or ideological.

We consider the power of the minister in this bill to be excessive and unnecessary and think the appeal process should be consistent for all decisions regardless of whether those decisions are made by the director or the minister. Accordingly, the OMA recommends that sections 9 and 18 be amended so that ministerial decisions will be subject to adjudication by the Health Facilities Appeal Board.

Another troubling aspect of this bill is the regulations. Subsection

33(1) allows for wide-sweeping regulatory control over the application of this proposed act. The regulations will, for example, allow cabinet to decide who will have access to patient and drug records, classify health facilities and independent health facilities and determine health care standards. It seems that these regulations will allow this legislation to have far greater application than simply the licensing of independent health facilities.

This potential for a broader application is of very great concern to the medical profession. The combination of a licensing procedure that puts cost considerations ahead of quality of care, the control held by the minister and cabinet and the uncertainty about future regulations should, in our opinion, make applying for an independent health facility licence very unappealing to physicians.

There is even less to attract members of the medical profession when one considers the situation they will face if they are practising medicine in a licensed facility. Similar to the inspection of an unlicensed facility, an independent health facility—that is, a licensed facility—can be entered by a Ministry of Health assessor without a warrant. Also, under provisions of section 25, the assessor has the right to examine and seize medical records and specimens.

In addition, subsection 25(3) requires the operator and the employees of that facility to confer with the assessor when requested to do so. We wonder why there is no provision for those who work in independent health facilities to have legal counsel present during questioning, a provision that is clearly stated for those in other health facilities, in clause 26(5)(f). The OMA recommends that section 25 be amended to state that the operators and employees of a licensed facility have the right to have legal counsel or other representation present while conferring with an assessor.

If the assessor or investigator decides to proceed with a complaint to the Health Facilities Appeal Board, the accused doctor will face what we believe to be an extremely unfair hearing. Subsection 20(6) states that the hearings at the Health Facilities Appeal Board will be conducted under the Statutory Powers Procedure Act. Legal counsel has advised us that under the Statutory Powers Procedure Act the board may admit as evidence any oral testimony or document regardless of whether it is admissible in a court of law. Therefore, hearsay evidence or speculation would be admissible even though such evidence would not be acceptable in a court of law.

Disciplinary hearings held by the College of Physicians and Surgeons of Ontario are conducted under the civil rules of evidence, and we believe there should be uniformity between the two bodies to ensure equitable treatment of all physicians. Therefore, the OMA recommends subsection 20(6) be amended to ensure that the Health Facilities Appeal Board hearings are conducted under the civil rules of evidence.

Compounding the situation created by the potential latitude of evidence at a facilities board hearing is the restriction placed on court appeals of board decisions. Subsection 21(1) states that decisions rendered by the appeal board can be appealed to a higher court on a question of law alone, not on a question of fact. As an example, if there were inadvertent factual errors presented to the board during the hearing, and those errors were subsequently discovered, an appeal to a higher court would not be allowed. It seems likely that some appeals of board decisions will be based on questions of fact instead of questions of law. Therefore, the Ontario Medical Association recommends that subsection 21(1) be amended to allow board decisions to be appealed on questions of law or fact or both.



The OMA has always supported a strong disciplinary system to protect patients from substandard care. We have never tolerated or defended those few physicians who conduct their practices in an unsafe manner. We would not have proposed the amendments if we believed they would in any way weaken disciplinary procedures. However, the proposed Independent Health Facilities Act, with its confusion about the right to legal counsel, broad rules of evidence and restricted right to appeal, would appear to deny a physician the right to a fair hearing.

Dr Teal: In conclusion, let us say again clearly that the professional association representing 19,000 Ontario physicians supports the expansion of community-based services. The health facilities that are currently in operation are popular. They are used by patients even though there is a private fee. This indicates to us that the quality and accessibility of care in the clinic environment is acceptable from the patient's point of view. As well, surgeons want to be able to provide the services for which we are trained in well-designed outpatient facilities.

We regret that the Minister of Health has introduced a bill that will not advance the quality and accessibility of medical care. After months of studying this act, it is the conclusion of the Ontario Medical Association that if it passes in its current form, we cannot recommend our members become involved in an independent health facility, either as an operator or an employee. The OMA makes this recommendation with great reluctance. Any other position would be contrary to our mission, which is to serve the medical profession and the people of Ontario in the pursuit of good health and excellence in health care.

It is our hope that the Minister of Health and the members of this committee will understand the serious flaws in this bill and introduce amendments that will expand community-based services and improve the accessibility to health care in the province of Ontario.

The Chairman: Thank you for your presentation and for leaving some time for questions. I have three people who have indicated a desire to ask questions, Mr Reville, Mr Eves and Mr Carrothers. Even though it will take us past the half hour, I am recommending that five minutes for each would be about right.

Mr Reville: I am glad you did not mince any words. It is clear you do not think this does much for improving community-based health care. I am interested that in spite of the 30 amendments, which I assumed the government negotiated with you, you are still not satisfied with the inspection procedures. You are not comforted that the assessors and inspectors will be CPSO appointees, or agreed to.

Dr Thoburn: The first part is that there was no major discussion of the amendments. We have met with the ministry on several occasions over the past year and taken part in seminars and other discussions, so we, like all the others, have given our input into the ministry and it has made the recommendations based on that.

As for the disciplinary and inspection procedures, as I am sure you are aware, the College of Physicians and Surgeons of Ontario has a long tradition of being the regulatory body in this province and has a great deal of expertise in this area. We are concerned that their role is being duplicated by government inspectors who will, under this act as it is written, have access to both independent health facilities and health facilities, "health



facilities" being defined as any place that health care is given. By definition, that is virtually any doctor's office.

The confidentiality aspect comes into it because under this act, government inspectors will have access to all records and be able to see samples and records in either an independent health facility or, indeed, any doctor's office.

Hon Mrs Caplan: Can I ask that Bob MacMillan clarify a point that was just made that was inaccurate?

Mr Reville: You could ask that but I think it would be inappropriate in my time. Perhaps you could use your own time.

1100

Hon Mrs Caplan: Could I ask that your time be extended? I think it is something—

Mr Reville: Yes. If you want to extend the time, by all means, Dr MacMillan, leap in here.

Dr MacMillan: Just to correct some misinformation possibly, Dr Thoburn.

First of all, you recognize that for a number of years the college has gone in on fiscal matters. As executive director of the health insurance division, on my recommendation a referral can be made to the MRC, the medical review committee of the college, which routinely goes in where there appear to be infractions in billing practices by doctors. Nothing will be different with this amendment, if it passes. The inspector will always still be someone from the college who will go in to look at either quality of care or billing practices that appear to be in breach of this particular legislation. There will be no government inspectors. It will be physicians who will go in as appointed by the province.

Mr Reville: You will add that on, will you?

The Chairman: Yes, I will. Carry on.

Mr Reville: You are very kind, Mr Chairman.

I am very worried about your concerns that this bill will foster bargain-basement health care through the tendering process. You should know that on Tuesday of this week when we were briefed by the ministry on the bill there was no indication given by the minister of the kind of budget that was contemplated for implementing independent health facilities nor the impacts on other current health care budgets. So I think your concern is a real one in that connection.

I did want to ask you about the tray fee business because I certainly understand the issue. It has been an issue of concern to me apart from the Independent Health Facilities Act. Since the passage of Bill 94, there has been a proliferation of fees similar to tray fees which the government indicated to us, the New Democratic Party, over and over again, that it was discussing with the Ontario Medical Association. What you have indicated is that there have been limited discussions about tray fees.

Do those discussions also include discussions about phone advice and the paperwork that I know takes up a great deal of time but are uninsured services and therefore a cost to the profession? Has there been any serious discussion about expanding the list of insured services or dealing with those matters in any other way?

Dr Thoburn: I am aware of a fair amount of discussion that is taking place between the medical profession and the government about uninsured services. Over the past few years, it has been of concern and in some areas an area of confusion.

In the old days, a great deal of these services were provided for free even though the fact that they are uninsured has been clearly defined in the OMA fee schedule for many, many years. Doctors are increasingly charging for these services because, quite frankly, they are caught in a cost squeeze and are no longer able to provide as many uninsured services for free as they once did.

In addition to that, as a general practitioner, I can tell you that the requests for these services, particularly in terms of forms and certificates, are just steadily increasing. So it is a matter of ongoing concern to both the government and the medical profession. As for the government extending its services to cover the cost of these uninsured services, I think the government could best give its answer as to how it would feel covering the cost of every form that is required by an employer of its employees for being sick for one day.

Mr Eves: I have three or four issues. I would like to try to touch upon as many as we can in the five minutes that have been allotted.

On page 4 of your submission you indicate your concern about the power of the government director to initiate an investigation by the college. Besides this being an abuse of the process of self-regulation, as you point out, it strikes me as having perhaps severe implications for the principle of patient confidentiality. Would you care to comment on that?

Dr Thoburn: Perhaps we could be accused of being extrasensitive about patient confidentiality, but it has always been a very important issue with us. We understand that there is a section here in the act which does give the rules under which investigators and assessors should operate with regard to confidentiality, but we also think that in the real world, the more people know about something the more chance it will get out. There are numerous examples of this.

We have some concerns about the government inspectors, such as in subsection 26(1), where it says: "An inspector appointed by the registrar may, at any reasonable time, without a warrant, enter any premises" of an independent health facility. The more inspectors you have coming in and having access to medical records, the more chance there is information will be disclosed.

Mr Eves: Moving on to page 9 of your submission, I am focusing now on the power of the Minister of Health to order a director to refuse to issue a licence under subsection 9(5) and there is no means of appeal; yet if the licence is not to be renewed, that decision can be appealed to cabinet. There does not seem to be any continuity or consistency, shall I put it, with respect to appeal rights. Can you see any need for such a power vested in the Minister of Health?

Dr Thoburn: No. I think we have tried to make that point within our submission, that we think there should be uniformity of appeal processes. We are a little concerned and confused that such absolute power should be granted to the minister.

Mr Eves: On page 11 of your submission, you make a rather strong statement, I would say, in the last paragraph about "the combination of a licensing procedure that puts cost considerations ahead of quality care" and then you go on to talk about "the control held by the minister and cabinet, and the uncertainty about future regulations." Would you care to explain your description of a procedure that puts cost considerations ahead of quality care? How did you come to that conclusion and on what basis do you form that opinion?

Dr Thoburn: I can tell you, as a physician and someone involved with the Ontario Medical Association, that we have been aware, as now the general public is, that the government is increasingly concerned with cost control within health care. We have seen numerous examples, in our opinion, where cost control measures have been employed without due consideration to the effect they are going to have on medical care.

I think that statement was just expressing our very serious concern that if you enter into a competitive bidding process, that the bottom line will be who can do the most for the least.

Dr Teal: I think it is important to know that you understand in surgical procedures there are various ways of doing things, and disposables cost a lot of money. When you are doing a procedure, you can make a decision to use this disposable or not. Hopefully, when you are doing a procedure, you are not going to decide not to use it, or "Maybe I can get by because I do not have the money in my budget."

Doing cataract surgery, there are things that are—Healon is a solution that is injected into the eye. It costs about \$80. It makes the procedure much safer, but about 80 per cent of the time you could get away without using it; but what if you fall in the 20 per cent? When you start to think: "Do I really want to use that? Do I want to use the solution that costs another \$100 a bottle?" It is a scary thing when it is your eye and people are making decisions about how to deliver the surgical care, based on "How cheaply can I get by, because that is what is in my budget?" And if you are bidding for something, that is what you are looking at.

Mr Eves: The last issue I would like to touch on is perhaps more of a statement than a question. I certainly share the OMA's concerns about the admissibility of hearsay evidence. I just do not think that is at all appropriate.

1110

Mr Carrothers: I want to ask questions in two areas. I guess Mr Eves has already touched on the first. We have talked on this question of consistency of appeal processes, and you have mentioned one area of legislation. There are other licences issued, I think. Do labs of various forms not get licences and so on? What appeals exist in that legislation, or do you know, for refusals to issue a licence? Is it consistent with what you are suggesting, or is it the same as what is in this?

Dr Thoburn: I do not know.



Hon Mrs Caplan: Perhaps the ministry could respond about the consistency of appeal. I think that is relevant. Could I ask Gil?

The Chairman: Is that okay within your time?

Mr Carrothers: Yes.

Hon Mrs Caplan: Gil, would you respond to the consistent appeal approach? I think there are a couple of acts where licences are granted, and the powers to appeal the decision of the minister and the ministry are of interest at the moment.

Mr Sharpe: The whole question of appeal of ministerial discretion and the so-called public interest dimension in the granting of licences and the decision to put out proposal calls is something that, of course, has been debated for many years in governments. The way this bill is construed is that, in the first instance, while there are criteria as to what kinds of services may be required and the form which the proposals should take, the ultimate decision as to whether there is a need for the service in a particular area is that of the government and the minister. Normally, in other statutes under the Ministry of Health, that decision is discretionary and is not subject to appeal. That is considered the prerogative of government.

In this instance, it was decided that after someone already has a licence and the five-year period has run, should it be decided by government that there are no longer any funds to support the service in that particular area or that the particular service could be better served by providing it through, say, a local hospital or that the need for the service in that community is no longer there, the minister—again, government—has the discretion to make that decision. Ultimately, that decision can be appealed to cabinet. To have a review of the exercise of ministerial discretion brought by some judicial body is really inappropriate in terms of legal principles and unprecedented in terms of other statutes.

Hon Mrs Caplan: Are the lab licensing and nursing homes consistent with that?

Mr Sharpe: Yes, they are quite consistent.

The Chairman: Dr Thoburn, do you wish to expand on that?

Dr Thoburn: I obviously cannot argue in terms of legal context. I can tell you that I work with waiting lines every day. I know that currently clinics exist where people go and pay extra rather than wait a year or longer to get eye surgery done. The intent of this act is to make those clinics illegal.

Interjection: Illegal?

Dr Thoburn: Illegal in terms of charging patients. They can only exist by virtue of obtaining those funds through the government. It clearly states that the director and the minister, within this act, in considering whether to grant a licence, shall consider a number of factors, and those factors are laid out. The last factor is availability of money. Therefore, the scenario exists whereby, through this act, despite the fact that there is a need, despite the fact that there is a waiting list, despite the fact that people may be willing to spend their own money to get procedures done, if the ministry feels it is unable to come up with the funding, for whatever reason,



it can deny the accessibility of health care to these people. We feel that is a major decision and are uncomfortable with that resting on one person's shoulders.

The Chairman: Mr Carrothers, you have two minutes.

Mr Carrothers: I wonder if I could turn to your comments on page 3, the point you were raising about certain inspections being made with or without a search warrant. I just want to understand the kinds of records that would be in an independent health facility like this, because I am just trying to understand the practicality of that distinction.

I guess in my own mind I am thinking of these facilities as being a little bit like a hospital. In a hospital, inspectors go in. I mean, hospitals are inspected. When you do that, all records are looked at. I am just sort of wondering how you would somehow distinguish.

It would seem that in an independent health facility, the basic record is going to be the patient record, and the facility's records are really going to be the accumulation of those records. Those would include financial and other information as well, presumably. Therefore, in just looking at the quality of the care going on in the facility, any financial information is going to be seen.

I am just wondering how you would distinguish to require certain information to be looked at only through a search warrant, when those records are really going to be intermixed, unless I am misunderstanding completely how the recordkeeping would be done.

Dr Thoburn: I think I would like to see a search warrant, because it would provide an audit trail, for one thing, and an establishment of show-cause as to why this inspection was being carried out rather than somebody being able to drop in at will. That is my point about the search warrant.

Mr Carrothers: I can see the distinction where if somebody is going in strictly to look for financial information you can, say, get the search warrant and so on. I can understand that.

I guess the point I was making is that somebody going in and looking at quality, which you are saying could be done without a search warrant, would almost by implication, in the process of looking at quality and examining sample records or however he carries that out, obtain financial information. Therefore, I am wondering how you would prevent that information from being found out.

Dr Thoburn: I do not think it necessarily would be. The college of physicians and surgeons has always been able, and will under this act be able, to come in and check quality of care. Now, under this act, it is taking on the role of being inspectors for checking and seeing if they are in infringement of the regulations.

Mr Carrothers: Maybe the records are kept separately. I guess, having been subjected to spot checks in my own profession, it seemed that all records were looked at. Any information in the practice I had was learned by that individual. Therefore, I am just wondering how you would prevent it from being—

Dr Thoburn: I do not think you can prevent it. This is our concern about government inspectors having a lot of access to these facilities in that if you come in and do everything it says you are allowed to do under this they will have virtually open access to everything in the place.

Mr Carrothers: But if I understood correctly, it will be college of physicians and surgeons personnel, so these are the same people who will be doing the other types of inspections.

Dr Thoburn: Not necessarily. Under my interpretation of this act, there will be access by both government inspectors and college inspectors or assessors. It is confusing the way it is written. You go back and forth and up and down trying to sort out who is doing what.

The Chairman: I am in the committee's hands, but we are over the time. I see two other people with hands up, Mrs Cunningham and Mr Adams. Is the committee—

Mr Adams: Mine is simply a supplementary, Mr Chairman.

The Chairman: So is Mrs Cunningham's, but we are at the limit of our time. Thank you very much for your presentation. We as a committee value the input of the Ontario Medical Association and appreciate the time you have taken to come and appear before us.

Mr Jackson: While the next deputants are arranging themselves could I make a request for some information from staff and they could get back to us?

The Chairman: Yes.

Mr Jackson: Very briefly, this is an item which came out of the OMA brief. I heard nothing with respect to a citizen's right to be informed that his file or a specimen has in fact been removed or viewed by someone other than his physician. Could we find out in legal terms—

The Chairman: Whether that issue has been addressed?

Mr Jackson: —whether it has been addressed, whether it has been examined and whether there is a legal opinion on it? The AIDS case is the one that is most notably of concern.

Second, do we have a legal opinion from the Attorney General's office which is separate and distinct from the commissioned legal opinions outside the ministry—Tory, Tory, for example—with respect to this matter of confidentiality? That is the area I am most concerned about.

The Chairman: They will take that under advisement and report back at another time.

The Chairman: Members of the committee, our next delegation is the Ontario Chiropractic Association. Representing that organization are Dr Robert Haig, president, and Dr Lloyd Taylor, its representative here at Queen's Park. Welcome to the committee, gentlemen. You have half an hour for your presentation. You may divide the time as you see fit. However, as you have seen, committee members do appreciate if you would leave some time for questions.

## ONTARIO CHIROPRACTIC ASSOCIATION

Dr Taylor: We thank you for the opportunity of being here this morning. Looking around and seeing the keenness with which all the MPPs are sitting here, I wondered if summer holidays were actually on out there or what is really happening. It totally surprises me to see the attendance here today. This must be a very important committee.

With those brief remarks I will turn it over to Dr Bob Haig of St Catharines, president of the Ontario Chiropractic Association. Bob will make our presentation.

Dr Haig: Thank you very much for this opportunity of speaking with you this morning. You will be pleased to know that we will be relatively brief. There is one major point, an important point for us, that we want to make. It will probably take us about 10 minutes to go through this, so there will be plenty of time for questions and there may be some left over.

Past the cover page, the brief that you have in front of you has a page and a half of executive summary. I am going to skip over that for now. There are four or five pages in the body of the brief which I propose to go through now and then come back to the executive summary with a recommended amendment.

The Ontario Chiropractic Association is a voluntary association representing 1,250 chiropractors who practise in the province. Last year, the chiropractors in Ontario provided direct patient care to somewhere in excess of 80,000 Ontario citizens. Chiropractors are currently regulated under the Drugless Practitioners Act, and our remuneration from the Ontario government is set under regulation 462(48) of the Ontario Health Insurance Act.

We are appearing before this committee today to seek clarification as to whether Bill 147 applies to the practice of chiropractic, and if so, to seek an explicit exemption from the proposed legislation. Recent communications with the Ministry of Health indicated that chiropractors may indeed be covered by this act, and if that is the case, we could be exempted by regulation. However, for reasons that we will share with you, we believe the principles of fairness and equality require that we be exempted through the act rather than by regulation.

When the Minister of Health (Mrs Caplan) introduced this legislation on 2 June 1988, she outlined the intent of the new act as follows:

"The Independent Health Facilities Act will provide for the licensing of facilities providing some services which traditionally have been available primarily in hospitals....

"There are currently a number of facilities operating where the patient is charged a facility fee; that is, a fee or overhead cost associated with an insured service which has traditionally been performed in a hospital....

"This act will encourage a variety of procedures now being done in hospitals to be safely provided in the community."

Finally:

"At the heart of our government's commitment to health care in this



province is the belief that many health services traditionally associated with hospitals can be better provided in the community."

The backgrounder that was tabled with this act stated:

"The minister and the ministry have recognized that new technology has made it possible to safely perform some medical procedures in an out-of-hospital setting."

The fact sheet that was with it stated:

"Independent health facilities will function in a similar manner to hospital outpatient clinics with health care providers such as doctors, nurses and technicians."

Finally, Deputy Minister Martin Barkin indicated at the 7 November 1988 conference on the Independent Health Facilities Act that the purpose of the act was to create a shift from the traditional place of delivery to alternative locations.

The Ontario Chiropractic Association understands and supports the intent of the bill to control the development of free-standing surgical centres in a rational way and to achieve standards for the delivery of quality medical care. While we accepted the original intent of Bill 147, we now have major concerns after being informed by the ministry that the practice of chiropractic may also be covered under this new act. Although it is not the intent of the act, we are informed that it might be the result.

Since the intent of the act is to shift services from hospitals to the community, it should not apply to chiropractic services, which are already 100 per cent community-based and which are only partially insured services and therefore not exempted by section 2, which exempts the normal and usual private practice of other professions.

We are informed that chiropractic services could inadvertently be included because of, first of all, the broad definition of "health facility" in subsection 1(1) as "a place in which one or more members of the public receive...health services and includes an independent health facility" and, second, the definition of an "insured service" as a service rendered by a practitioner within the meaning of the Health Insurance Act for which an amount is prescribed by the regulations under the act.

Some of the members of the committee would be aware of the unique coverage of chiropractic services as an insured service within the OHIP scheme. OHIP coverage for chiropractic services has an annual limit of \$220 for a 12-month period, 1 July to 30 June. In addition, the OHIP payments within the annual limit are restricted to \$11.75 for the initial visit and \$9.65 for every visit thereafter. The OHIP payment represents only a partial amount of the service cost, with the patient paying the difference directly. The patient then would pay the full amount once the annual limit of \$220 has been reached.

These direct patient payments have never been considered a facility fee. The status of coverage of chiropractic services is unique within the Ontario health care system, but under Bill 147 the noninsured cost of chiropractic services could apparently be considered a facility fee under the definition of "facility fee" in section 1.



We realize that chiropractic services could be exempted, at the pleasure of the minister, under subsection 2(3), by regulation, but it is our contention that we should not be covered by the act at all and that we should be exempted through the act and not through regulation.

Reasons for statutory exemption on the face of the act rather than by regulation would include the following:

(a) Chiropractic services lie outside the intended scope of the legislation completely. The usual and normal practice of some other professions is exempted by the act rather than by regulation in subsection 2(2). The principles of fairness and equality require that chiropractic services be dealt with on a similar basis, but the unique OHIP coverage where the same service is either a partially insured or a noninsured service, depending on whether or not that patient on that day had reached his annual maximum, means that subsection 2(2) is inadequate for those purposes. To avoid confusion, an explicit exemption is necessary.

(b) The practice of chiropractic and government fees for such services are already fully and adequately regulated by the Drugless Practitioners Act and the Health Insurance Act.

(c) This refers to subsections 26(4) and 26(5), which provide for an inspector appointed by the registrar of the College of Physicians and Surgeons of Ontario to enter and investigate the offices of a chiropractor or any other facility exempted by regulation under section 2.

I realize there has been an indication from the minister that this will in all likelihood be altered. But it is obviously inappropriate. The activities of the CPSO and its inspectors should be restricted to the regulation of medical practitioners, over whom they have jurisdiction. Obviously, as you know, other disciplines, including chiropractic, have their own statutory and regulatory bodies.

(d) Subsections 33(24) and 33(25) give the minister the power to set chiropractic fees by regulation, even for services that are not insured. This would represent a fundamental change in the concept of how fees for chiropractic services are determined, fees that have never been fully insured by the government of Ontario.

The proposed amendment that is there is repeated in the executive summary. I am just going to flip back to the first page after the cover page, which is the start of that, to recap.

1. It was not the intent of the government that the Independent Health Facilities Act should govern chiropractic offices.

2. Bill 147 provides for exemptions in the act and by regulation. Exemption of chiropractic services should be clearly stated in the act rather than by regulation because of the following:

(a) The practice of chiropractic falls completely outside the intended scope of the legislation rather than being an exception within the purposes of the legislation;

(b) The normal practice of some other professions is exempted in the act

rather than by regulation. Fairness and equality would require the same for chiropractic.

(c) However, chiropractic practice is at risk of being covered by the act because of the independent fact, which is completely unrelated to the purposes of the Independent Health Facilities Act, that it is a partially insured service.

Point 3 in the executive summary sets out a recommended amendment. You will see that what has been added to subsection 2(2), "This Act does not apply to the following health facilities, places or services," is subclause (iii), "an office or place used for the purpose of providing chiropractic services."

As a corollary to that, subsection 26(4) should also be amended. It relates to the inspection process. If that change were effected and the other changes that the minister suggested were not, then subsection 26(4) should be amended.

Subsection 26(4) should read, "Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt by regulation from the application of this act."

That summarizes the one point we do have and it was over relatively quickly. I would be happy to answer any questions you might have.

1130

The Chairman: Thank you, Dr Haig, for your presentation and for leaving time for questions. Did you wish to add anything before going to questions? The first questioner is Mr Reville.

Mr Reville: Regrettably, I do not really have any questions to ask of the chiropractors because they have been absolutely clear. Thank you. But the minister seems to have disappeared.

The Chairman: She had to take a call. Mr Keyes is here if you wish to direct the question.

Mr Reville: Is it your intention to cover chiropractic offices?

Mr Keyes: I would ask our legal counsel to comment on that.

Mr Sharpe: No. I believe we have written your association indicating that it is not our intention to cover your services. Our preference initially was to have a list of exemptions in the course of the statute. That is how the original bill was construed. We would be proposing, in clause-by-clause, to set that out by regulation for everyone because as I am sure you are aware, if we exempt by statute, any time any new individuals, professionals and so on come along we would have to open the act each time.

Since developing our initial list we have had a host of people write and say: "What about us? We may be caught." We felt for that reason we would propose in committee to deal strictly speaking with the matter by regulation. You would be exempt by regulation as would all of the other clinics, facilities, hospitals and so on that we intend to address.

Mr Reville: Thank you, Mr Sharpe. It is obvious that the government will not support the amendment you seek. I guess the next question is, will

the committee be given the courtesy of seeing this regulation before the bill disappears from this place?

Mr Sharpe: Certainly, by the time the committee goes into clause-by-clause, we could have a draft ready of the proposed organizations and professionals that would be exempt.

Mr Reville: It would be helpful for members of the committee to see the draft regulation. You should be aware, however, that the committee has no control over the regulations and it has happened in the past that various promises of regulations have not always been strictly adhered to.

Mr Carrothers: Quite frankly—

Mr Reville: Do not be shocked, Mr Carrothers; it is true.

Dr Haig: I have no doubt whatsoever that the administration would be, to begin with, by regulation. However, from our point of view it would be far better if that were set more clearly in the act for whatever might take place down the road.

Mr Reville: For what it is worth, I will be prepared to move the amendment and I am sure that if I do not, Mr Jackson will be prepared to, but it sounds like it will not be supported by the majority of the committee, which is regrettable.

Mrs E. J. Smith: But the regulation will?

Mr Reville: The regulation could be supported or not; it does not matter. The regulation is a matter for cabinet.

The Chairman: I think we are getting into a debate that probably will ensue later.

Mr Reville: Just a few days early, Mr Chairman.

The Chairman: No; that is fine.

Mr Eves: As usual, the astute Mr Reville has covered most of the ground I wanted to cover. I will have to learn to get my hand up more quickly, I guess. I also would like to address my remarks to Mr Sharpe and other people from the ministry.

The Chairman: Is that is okay with the delegation, to use some of your time for Mr Eves's direct questions? Okay.

Mr Eves: I understand Mr Reville's concern about seeing the regulation before the committee proceeds with passing the bill clause by clause. Also, as Mr Reville has already very appropriately pointed out, regulations are subject to the whims of individual ministers in cabinet from time to time. They are not part of the statute. Have you given any thought to perhaps amending the statutes or the definition of what is covered by the act and what is not, so that various health professions, such as the chiropractors, which find themselves in this particular situation can be covered by such a definition in the act itself, as opposed to a long list of exemptions by regulation?



Mr Sharpe: Frankly, we had looked at that possibility. Apart from the reasons I gave earlier as to why it is better, if you are going to have lists, to do it by regulation so the list can be easily amended as required, I believe that although the intention of the government now is to address only services rendered by physicians, it may be that at some future time, given the implementation of the health professions legislation review and the changing roles and status of different professional groups under that proposed legislation, there may be appropriate roles where at some time other groups such as chiropractors enter into arrangements with government to run independent health facilities and receive funding and all of the other amenities that legislation would provide. Should that time come, rather than having to amend the legislation, it might be more appropriate to have the flexibility to deal with it by regulation.

Mr Eves: My problem with that is exactly the point I would like to make. Surely the Independent Health Facilities Act could apply to physicians only at this point in time and if any government, whatever its political stripe, at some future point in time should decide that it wants it to apply to other health professions as well, surely that is a matter for the elected representatives of the people to decide and not for some bureaucrats and ministries. That is my comment.

Mr Sharpe: If I could comment just very briefly on that, the way the legislation is construed now, it of course applies to anyone who is proposing to charge a facility fee, which is defined in terms of "insured services." The Health Insurance Act currently covers services of other practitioners, as you know, not just those of physicians. So the way the Independent Health Facilities Act is at present before the Legislature, potentially it would cover the services of other practitioners. While at the present time the government is talking about exemptions, I do not believe these are being construed or proposed as necessarily permanent exemptions. In other words, the thrust of Bill 147 is to deal with those persons who render insured services, and those services do cover groups other than just physicians.

Mr Eves: You are the one that used the word "physicians," not me. I extracted that word.

The Chairman: We are getting a debate going between Mr Eves here and a member of the minister's staff. I think it is Dr Haig's time and Dr Haig did indicate he wished to comment on this.

Dr Haig: In regard to just one thing Mr Sharpe said, it is true that in section 2 exemptions are related to "insured services." But just for example, the practice of dentistry is exempt because dentists do not charge for insured services; the practice of optometry is exempt because of the services for which it charges and that is all it charges. My point is just that one would expect that a profession like chiropractic should be exempt as part of that within the act, except that it is not, strictly because of the Ontario health insurance plan situation that exists now. It would be appropriate for us to be treated in the same manner as those other professions, which are the act. I have made the point but I wanted to make it again.

The Chairman: Yes, and you have made it very clearly. Mr Jackson had a supplementary on that before I go to Mr Carrothers.



Mr Jackson: I will hold on and if time permits, maybe I can check with the ministry on it later.

Mr Carrothers: We already may have got into the question I wanted to ask. I suppose I wondered what in general your organization thought of the thrust to provide community-based health services. I am just wondering if I sense from this presentation that you want to stay outside the legislation almost on a permanent basis. I would have thought your profession might want to play a more important role in the provision of health services. I am just wondering, looking down the road, whether you see any opportunities or reasons for your profession to play a more major role and why you would want to stay outside this legislation.

Dr Haig: Yes, obviously. To answer the first question, we should be playing, would like to and intend to play a more major role, but that is not what is addressed by this specific legislation.

Mr Carrothers: Unless I am missing the boat completely, this is to create a situation where funding could go to creating facilities where services could be performed in dealing with some of the capital costs and other costs related to that, which I think would have been quite of interest to your profession if its role were going to be expanded. I guess that is why I am a little surprised.

Dr Haig: I cannot right now conceive of a situation where a chiropractor would be setting up an independent health facility.

Mr Jackson: To be limited to a few thousand dollars in billables in a year; I mean, he is missing the point on that.

Mr Carrothers: I do not think I am, with respect, Mr Jackson. It is just trying to see where we go with the delivery of health services. It just seemed to me there was a major role—

Interjections.

1140

The Chairman: Order. Please go through the chair. Mr Adams is next.

Mr Adams: I listened very carefully, and it is exactly a supplementary to that. I view your profession as being community based, as you said yourself, wellness oriented, mobility oriented, keeping people in their homes, keeping them moving and all those things. This legislation aims at quality health care based in the community. I realize that the purpose of your being here today is to identify perceived problems with it. You did mention that you support, I think you said, the intent of this bill.

Dr Haig: That is right.

Mr Adams: Like my colleague Mr Carrothers, I saw opportunities there. What about opportunities for you and your colleagues working on a team basis in such clinics and things like that? Are there not opportunities within this legislation for your profession?

Dr Haig: If we are talking about the relocation of hospital-based services as the major intent of the legislation, it is my understanding that—

Mr Carrothers: I guess we are seeing a broader purpose here than that.

Dr Haig: If that is what we are looking at as the major intent, there are not chiropractic services in hospitals at the present time.

Mr Carrothers: But if we are not, and we are looking at a broader series of services being provided in different ways, does that not open the thing up? I think this legislation is aimed at much more than just that.

Dr Haig: I understand the point you are making.

Mr Adams: Well, given the exemptions—

The Chairman: Please allow Dr Haig to answer.

Mr Adams: That is all.

The Chairman: You are done? Okay. Mr Jackson.

Mr Jackson: Would it not be difficult to participate in a clinic situation, where the rules of practice specifically prohibit you from billing the patient, which is an essential component now of chiropractic services, given the fact that you do not have full access to Ontario health insurance plan compensation?

I guess one of the restrictions to your participating within the bill and to having a chiropractor say, "Look, I will set up a clinic and I will, at some point when the government sets an arbitrary cutoff point for the amount of service"—what happens beyond that? Do you have to go to another clinic? It implies you cannot charge private funds. I have been trying to raise this point with physiotherapists and chiropractors since Tuesday of this week. Is that not a major inhibiting factor, if your services were completely compensable?

Dr Haig: If they were completely compensable, then the normal practice would be exempt by section 2 too.

Mr Jackson: That is what I thought.

Mr Keyes: There might be a point of clarification that Mr Sharpe could offer that would help resolve some of the dilemma that people seem to be concerned about with this bill, that it deals only with insured services. Would you mind if we had a 10 second comment?

Mr Sharpe: I will just make a point that many of the services that chiropractors now bill to patients, are, as I understand it, considered uninsured services in the sense that they are not covered by OHIP. There was a concern by your association that if you were within this bill, those services would automatically become facility fees and chiropractors would then have to be licensed in order to continue to bill for those services.

I just want to point out that the way the legislation is being proposed, it is possible to define under the proposals the constituent elements of insured services, to define many of these services out of the insured service definition. That does not automatically make them facility fees, because within Bill 147 they could be defined out of being facility fees as well. They could remain uninsured services that could be directly billed to patients.

With chiropractors covered by this bill, if that were ever to happen, it would not necessarily follow that direct billing to patients would no longer be permitted.

Dr Haig: Just controlled.

The Chairman: Dr Haig, your delegation has not used a full half-hour. You have some time for some concluding comments, if you wish.

Dr Haig: No, I do not think I need to make any concluding comments.

The Chairman: Okay, then I want to thank you for coming before the committee and sharing your views with us.

Dr Haig: Thank you.

The Chairman: Our next presentation is from Dr K. Meloff. Welcome to the committee. You have approximately 15 minutes for a presentation.

Dr Meloff: I do not think I will need that much time.

The Chairman: If you allowed some time for questions, that would be appreciated.

KEITH MELOFF

Dr Meloff: Great. I am a private practitioner. I represent myself and my patients only and no other organization.

I would put to this committee that this legislation is offensive. If I were the father, for example, of an eight-and-a-half-year-old child with Tourette syndrome—a disorder that some of you know nothing about, but some of you might—whom I saw yesterday in my office and whose parents are at their wits' end because they cannot get services under any circumstances for their child, private or public, I would find this legislation offensive. If I were the parent of a child who was out of control and could not under any circumstances get into any health care facility in this province but could perhaps go to Buffalo to a private health care facility and the state would pay for that, I would find this legislation offensive.

The essence of a democracy is choice and the citizens should be free to choose the type of health care they want. They should have the choice even to pay for it privately if the state cannot or will not pay for it. If such a private facility existed, the state's only interest should be that it meets or exceeds existing standards—no more, no less.

This bill does not even talk about that. With due respect to Mr Adams, there is not a word in this legislation about quality of care or delivery of services at all. It only talks about regulation, authority and power. All the power is vested in the minister and there is no power vested in citizens or citizens' free choice.

There is no possibility right now for anybody opening up a private health care facility or a private hospital under current regulation. It is against the law. It is an illegal act to open up a private imaging facility, for example, and charge people who would be quite willing to pay for images. I have to send patients to Buffalo to get them done in a timely way because they cannot be done in Toronto. Currently, it is illegal to do this and this



legislation does not make it any easier.

I find it particularly offensive that there is no authorship attributed to this document, the people who drafted—

The Chairman: No what?

Dr Keith: No authorship. The names of the people who wrote this draft legislation page by page are not mentioned. I think it is abominable legislation. It is punitive, it is intrusive, it is restrictive. It defies freedom of choice. Would the authors of this legislation be accountable if someone who was denied access to a private facility because of this legislation were to suffer or die? What fines and what punishment would be suitable for a bureaucrat or politician who prevented access? I wonder how many of you have ever thought of that. I regularly see people suffering from lack of access and this legislation does not guarantee it or improve it.

Particularly offensive in this legislation are all-embracing invasions of privacy, particularly patients' records. If someone wanted to open up a private psychiatric facility in this province, he probably could not, even though they are sorely needed. Anyone who entered that facility would have no assurance that his records would not be reviewed by a nameless functionary of government.

I hope, as a citizen of this province and a defender of my patients, that this bill be revised to reflect freedom of choice. That did not take very long, did it?

1150

The Chairman: Thank you, Dr Meloff. I am very familiar with your work. I have a son with Tourette syndrome. He is being treated by Dr Sandor. My wife and I have started a Tourette syndrome group in our community. I am surprised that you see this as a problem for a person such as myself. I would ask you to elaborate on that a bit.

Dr Meloff: Oh, sure. An eight-and-a-half-year-old child whom I saw yesterday went to the Toronto Western Hospital. You cannot admit him to the Toronto Western Hospital, because he is a child. He went to the Hospital for Sick Children. The hospital cannot admit a child under the age of 12 who is aggressive or acting out. It cannot. It has no place.

The Chairman: But how would this act—

Dr Meloff: If there were, for example, a private facility in this province to care for emotionally disturbed children, which does not exist by the way, any operator of such a facility who operated for profit would be prohibited or inhibited by this legislation from opening up, even to people who are willing to pay for it. Period. It says very clearly, notwithstanding all of this free trade and so on—you know what I am talking about—any for-profit enterprise would not be allowed.

If I directed that this child had to be sent to a private children's facility in Buffalo, it is likely that the state would pay for that child, but such a facility could not open up in Ontario, because it is almost impossible. This act does not facilitate it one iota.

The Chairman: It is my understanding that the act permits someone to



identify an area that is not being served and put together a proposal for an independent health facility to meet that need and for government to then fund it. Is that not your interpretation of the act?

Dr Meloff: I interpret the negatives. This act is loaded with negatives. This act is loaded with punishment. This act is loaded with restrictions and inhibitions. It is not loaded with facilitations. It is not loaded with easements. It does not make anything easy for anybody.

In an ideal situation, I should be able to open up a clinic and offer private services to people who are willing to pay when they cannot get them in state facilities right now. In a democracy, I should not have to go through a lot of red tape to do it.

The Chairman: Okay. I thought I would ask those questions off the top, because I do have an interest in what you said.

Mr Reville: We do not mind your abusing your position as the chair. It is okay. Carry on.

Dr Meloff: Mr Neumann, I respect that you are involved in this problem. This is not the only problem that I deal with. I deal with a wide variety of children—

The Chairman: I realize that.

Dr Meloff: —a wide variety of difficulties and I regularly encounter obstacles to their care. I am not being critical. I think it is impossible for the state to provide everything for everybody. It is impossible. I wish the state would recognize that impossibility, and I wish the state would make it easier for those of us who would like to provide services that it cannot, instead of putting obstacles in our path.

The Chairman: Okay. The first questioner is Mr Adams and then Mr Jackson.

Mr Adams: Dr Meloff, I actually think a great deal of people who have very strong commitments and are willing to come and present them in public. I do not know anything about this particular condition that you are concerned with.

The Chairman: You did not listen to my statements in the House.

Mr Adams: I must admit that, Mr Chairman, but I sense your concern for that area.

I also hear this underlying thing about the private enterprise option and the fact that it is not available to you in some sense.

You mentioned in your presentation my remarks about quality of community-based health care here. As you say, you are a defender, I think you said, of your patients. I represent the public; I am interested in quality health care in the community and I would not support legislation which I thought in any way endangered the quality of health care for the public.

I was surprised to discover, when I was elected to this Legislature, that we were dealing with more than 70 health care professional groups. There are different groups out there which in varying degrees are licensed to

provide the sort of services that you provide—70 different professional groups, not 70 individuals or 70 clinics. Those are associations and so on that we deal with. I was also surprised to discover that of all the developed jurisdictions in the world we have one of the highest levels in the western world of institutionalization of patients.

This bill—you said I said it had quality of health care implications, and you denied that—as I see it helps us in two ways with regard to those points that I made. One is that it gives us some sense of what is going on and allows us to monitor the quality of services which are being provided by these diverse groups to the public; and the other is that it helps us in this step away from institutionalization.

The Chairman: Are you going to get to the question?

Mr Adams: I was mentioned quite specifically in this brief and I think I am entitled to make this point.

The Chairman: We also have another member who wishes to ask a question and I would ask you to get to your point. We have two members who wish to ask questions.

Mr Adams: Do you not see there is a need for quality control of services which are being provided in the community?

Dr Meloff: I think quality control is important, but I fear for those people who view themselves as experts in quality control. I am sceptical of the notion that an untrained civil servant can set himself up as an arbiter of quality control, particularly in my field.

Mr Adams: What about the 70 professions other than your field?

Dr Meloff: I am not talking about them, I am talking about mine.

Mr Adams: We are. We are talking about health care provided by this large number of groups.

Dr Meloff: I realize that, but the Health Care Facilities Act talks about quality control that pertains to the profession of medicine. By and large, I think physicians do a very good job of self-regulation. It is not perfect out there, but if there are mistakes or errors, we already have a method of addressing those problems. We have the courts. We have a litigation process in place. This burdens the system further. There already is a system, working very well, that deals with issues of complaints and so on.

You are imposing quality control often where there is no need for quality control. In fact, the quality control that you talk about may in fact interfere with creativity and excellence because by providing a very rigid framework of quality you are saying, could say and I predict will say, "If you exceed that standard, we will not pay for it." That is what I fear. I am sure of it.

The Chairman: I think we should move to another member at this time.

Mr Jackson: Dr Meloff, I appreciate that you have covered a lot in your very brief presentation, all elements of the bill as they struck you, but the part that impressed me the most was the point which you articulated well but did not describe, which is the accessibility issue. I share with you that

concern and I raised it with the minister by using another example, that of lithotripsy services, where an increasing number of patients are getting a better level of treatment by going to the United States; a safer outpatient, a no-stay-overnight-in-the-hospital-type treatment and better quality than they are receiving here in Ontario.

I raised the question to the minister that you have now raised before the committee, which is that we can support elements of this bill which bring hospital procedures into the community, but what about new services which improve accessibility and treatment and therefore increase wellness? Nowhere in the bill do we get any clear indication or assurance as to who is in charge of making those decisions. I am given this one answer which was given to all members of the committee, and that is that an individual district health council would identify a need and therefore make application.

1200

My question to you is, since you have a specific concern for a neurological disorder and in fact it is not receiving sufficient support in this province, how would you feel if you had to go out and find the district health council that feels it should sponsor and support such a proposal? How would you impress that upon the minister, and how would you go about developing sufficient support for a proposal when it is not being generated by the very government that says health care is going to be more accessible?

Dr Meloff: I cannot answer that. It is unbearable for me. I work in Timmins and am the only neurologist north of Sudbury. I travel regularly through northern Ontario to Timmins, Kapuskasing and Kirkland Lake. I go there so that people will not have to spend thousands of dollars to come to Toronto. I cannot get a computerized axial tomography scan in Timmins and I think that is unacceptable.

I do not know where you generate the thrust for something like that. Why should that be a political football? Why is that not in place right now? It is obscene that people have to go to Sudbury or Toronto for a scan. This is not state-of-the-art technology; it is 17-year-old technology. It should be garden variety equipment in peoples' backyards.

This is why I find this legislation absurd. It will not solve that problem at all. If, as an entrepreneur, I wanted to open up an imaging facility that does magnetic resonance scans of spines or brains in Toronto, there were 10,000 people willing to pay \$1,000 each for that test and they would not ask the Ontario health insurance plan for a nickel of that but would relieve the system of its backlog right now, that would be against the law. That is punishable by a fine greater than murder.

I find that offensive and unacceptable in a democracy, and I wish that someone would listen to these issues for once.

Mr Daigeler: I would like to ask a general question. Do you support the principles of the Canadian medicare society?

Dr Meloff: Yes, I do.

Mr Daigeler: Then how do you harmonize that with your position?

Dr Meloff: I support the principle of a state-run health insurance system.



Mr Daigeler: The Canadian medicare system goes further than that. It has certain philosophies behind it that go counter to the philosophy—

Dr Meloff: The only philosophy that I disagree with is that of monopoly control. The philosophy that only the state can provide health care and no one else can is illogical. Every country in the world, including the Soviet Union, has abandoned this except ours. Mikhail Gorbachev, whose minister of health, a world-famous cardiologist, won a Nobel prize for nuclear disarmament, has privatized health care in the Soviet Union for those people who are willing to pay extra to see a doctor privately, but we cannot do that in this country.

In every civilized country in the world except Canada, private option is available for those who are willing to pay. That should be a freedom that is afforded any citizen in a democracy.

Mr Adams: I understand that physicians and surgeons are viewed the same as labourers.

Mr Daigeler: I respect your view; however, this is a discussion that was held 20 years ago and I think that collectively we have taken a position that is different from yours.

Dr Meloff: I know that you have taken a position different from mine. The problem is that people are suffering because of that position; people who are willing to pay cannot get the service, because it is not allowed.

The Chairman: I think we are getting into a philosophical debate.

Mr Daigeler: I think that is the issue.

Dr Meloff: You have not told me that the state can provide everything for everybody.

Mr Daigeler: No, it cannot. I agree with you there.

Dr Meloff: But you will not allow someone else to do it.

Mr Daigeler: I think, as a society, we have taken a Canada-wide decision to take these tradeoffs, in the interest of a health care system that tries to treat everyone as equally as possible. I admit there are tradeoffs, yes, but as a society and as Canadians, I think we have pride in a system where money does not necessarily influence the quality of care available.

Mr Jackson: Oh, it does; it is just the minister's budget instead of a person's pocket. That is the point.

Interjections

The Chairman: Order, please. Mrs Cunningham has the floor.

Dr Meloff: I appreciate your indulgence. I genuinely appreciate the opportunity of speaking to you. I respect a diversity of view and I am grateful for the opportunity of having spoken to this group.

Mrs Cunningham: I truly understand the position that you are bringing before the committee today. I am the mother of a head-injured son. If



he were to get the treatment he probably needs, he would go to the United States and our government would pay US\$500 to US\$600 a day for the service, so I hope that people like you will continue to come before committees like this to make certain that the kind of services our young people need are available, because you are quite right, they are not available now, and as the physicians told us this morning, they will not be recommending that their members participate in these kinds of clinics with the bill as it is written now. I hope that in another month or so you will be able to phone some of us and ask us what amendments have been made to the availability of these clinics to the people who need them the most.

I am very concerned about the role of the district health councils, because I do understand the politics that hospitals face right now in getting the services that the community needs funded by the province. This is a nonpartisan statement on my part. It has happened in the past, and although we made decisions in the past, I think we are on the threshold of being forced, I hope, by the public to make different decisions of the nature that you have brought before this committee today.

I am sure there are many people who value your profession and your services. I know that as a neurologist you are very busy and very much in demand and I know that you would not open a clinic according to this bill. I just wanted to make that statement because the arguments are very real for mothers like myself and I agree with you.

Dr Meloff: Thank you very much.

The Chairman: Thank you for coming before the committee, Dr Meloff. You and I will continue our efforts to educate general practitioners and others on the importance of early diagnosis of Tourette's and other related illnesses.

The committee recessed at 1209.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT  
INDEPENDENT HEALTH FACILITIES ACT, 1989  
THURSDAY 10 AUGUST 1989  
Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Adams, Peter (Peterborough L) for Mr Owen

Eves, Ernie L. (Parry Sound PC) for Mrs Cunningham

Pelissero, Harry E. (Lincoln L) for Ms Poole

Reville, David (Riverdale NDP) for Mr Allen

Smith, E. Joan (London South L) for Mr Beer

Also taking part:

Cunningham, Dianne E. (London North PC)

Clerk: Decker, Todd

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Board of Examiners in Psychology:

Wand, Dr Barbara, Registrar

Quarrington, Dr Bruce, Consultant

From the Ministry of Health:

Sharpe, Gilbert, Director, Legal Services Branch

Keyes, Kenneth A., Parliamentary Assistant to the Minister of Health (Kingston and The Islands L)

Caplan, Hon Elinor, Minister of Health (Orillia L)

MacMillan, Dr Robert, Executive Director, Health Insurance Division

From Laurentian Health Services Ltd:

Newell, John C., Manager, Industrial and Occupational Health Services

From M. K. Bochner Eye Institute:

Stein, Dr Harold A., Director

Individual Presentations:

Blythe, Merle H., Physiotherapist

Mantha, Hubert E., Solicitor for Mrs Blythe

Hewlett, Dr Patrick

Bohus, Stephen

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday 10 August 1989

The committee resumed at 1410 in committee room 1.

INDEPENDENT HEALTH FACILITIES ACT, 1989  
(continued)

Consideration of Bill 147, An Act respecting Independent Health Facilities.

The Chairman: Members of the committee, we will call the meeting to order to begin our afternoon hearings. We are convened to consider Bill 147, An Act respecting Independent Health Facilities, and our first presentation this afternoon is by the Ontario Board of Examiners in Psychology. Representing that organization is Dr Barbara Wand, registrar, and Dr Bruce Quarrington, consultant. Would you take the seats here across from the chairman.

You have half an hour for your presentation. Welcome to the committee. You may use that half-hour as you see it, dividing it between presentation and questions from committee members. Committee members usually appreciate it when you leave some time for questions.

ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY

Dr Wand: Thank you very much. We appreciate the opportunity to be here to comment on the bill at this stage. I thought perhaps the best thing for us to do would be simply to summarize some of the main points.

The Chairman: Can I just interrupt? If members are looking for the brief, it was distributed first thing this morning. It was right in front of you on your desk. Carry on, Dr Wand. You have the floor.

Dr Wand: I think we have perhaps three general points. First, we are critical of the bill in its present form to the extent that it is limited mainly to the business details of health facilities and the procedures in licensing a facility, that very broad discretionary powers would reside with the minister and the director appointed by the minister, and that the operating principles and criteria remain obscure and would be articulated only in regulations, if at all. The bill appears to permit the allocation of public funds to facilities organized to make a profit. I think those are our main points of concern.

Secondly, we would like to recommend that the bill be redrafted to include a defined role for the health professions, and where appropriate their regulatory bodies, in setting standards and controlling quality of services in these facilities, in conducting assessments and inspections and generally in administering the act that regulates the facilities.

In addition, we were concerned that regardless of the extent to which the act would authorize inspection of patient records, there should be a requirement that clients of these facilities be given prior information about these provisions; that is, the extent to which confidentiality or the



protection of confidentiality could be enforced, before a patient is asked to consent to a service provided by these facilities.

Third, we would recommend that the health professions be asked to play an active role in the early stages of drafting the regulations, in particular the regulations in the parts of, I believe it is section 33, that we have identified in our submission.

In addition to this brief summary, we have noticed in the background statement prepared by the ministry that the role of district health councils would be a large role. We have noted that other organizations that have made submissions to this committee have recommended an enhanced role for district health councils, I gather in reviewing the kind of independent health facility that would be licensed. We also note there is no reference to district health councils in the bill.

Although we are not clear—we are not making this a really strong statement—we do believe that the role of district health councils should perhaps be enhanced, but perhaps this should be the case only if the members of district health councils are elected and therefore can be seen to be truly representative of the district they act for.

I think this is all I would propose to say at this point. Maybe Dr Quarrington would like to add something.

Dr Quarrington: No, nothing to add.

Mrs O'Neill: I had some difficulty with a couple of the things that have been presented by Dr Wand, which I feel is a somewhat different understanding of the bill that you have than I have. You said there seems to be an emphasis on for-profit when in the bill itself it says "nonprofit."

Dr Wand: I do not believe we felt there was an emphasis. We were concerned that there was no prohibition against the allocation of public funds to help facilities organized to make a profit.

Mrs O'Neill: All right. I guess "preference" is not a strong enough word for you then, I suppose is what you are saying.

Dr Wand: No.

Mrs O'Neill: Is that what you are saying?

Dr Wand: Yes.

Mrs O'Neill: Second, I feel there is some misunderstanding, and it seems to be recurring, on the subject of confidentiality and this bill, particularly now that the amendments, after consultation, have been increased, particularly in the confidentiality area. I wonder if one of the ministry officials will take us to page 26 and go through that for us so that we can try to straighten out once and for all what this bill does and how it protects confidentiality, because as far as I know, we have declared that a breach of it will be an offence.

1420

Dr MacMillan: Are you talking about—

Mr Keyes: Section 26.

Mrs O'Neill: Section 30 on page 26.

The Chairman: I think the committee has heard this several times.

Mrs O'Neill: I realize that, but there is so much misunderstanding on this particular item. It comes up with every presentation and we did not really say the whole story this morning. I think we should get it on record. Certainly, it has been brought up by the presenter.

The Chairman: Let's do that, but my preference, as chair, is to give the time to the delegation. Let's get it quickly clarified. We have other questioners.

Dr Wand: I think we are aware that confidentiality is protected. I think our point was that any limitations in confidentiality should be made known to the clients of the facility.

Mrs O'Neill: I would like a comment on that, if I could use my time, about the limitations.

Dr MacMillan: In Ontario, any medical facility is subject to scrutiny by the College of Physicians and Surgeons of Ontario, which means that any patient's record in the province, presently and probably for the past 100 years, has been scrutinized by members appointed by the College of Physicians and Surgeons of Ontario where there seemed to be some inappropriate activity on the part of the practitioner, or in fact on a routine visit by the college.

With this bill, it would be extended to allow that intervention by the college or any other licensing body that the ministry would like to appoint to go in and look, where the public may be ill served either by quality of service or inappropriate billing. It is simply an add-on reason for the college, or a college of some kind, to go in and scrutinize the care. You would have to inform every patient in Ontario if you wished your activity—as far as notification to the public goes.

Dr Quarrington: May I comment? I think there is still room for concern, though, because you are referring to a general medical record. In so far as psychologists are operating in such a facility, there would be a psychological file maintained that would not be part of the general hospital record. It would contain materials that were used in reporting that would be assembled and put on that record, but there would still be reason to be concerned about access to notes taken of interviews held with clients that would not be on the general record.

Mr Carrothers: I guess we have already opened the issue. I too was struck by the comments on confidentiality. I am not quite sure what the Ontario Board of Examiners in Psychology does. Are you an accreditation body for psychologists?

Dr Wand: We are representing it.

Mr Carrothers: Then if your accrediting psychologists have to deal with this issue themselves, do you inspect, if I could use that term, your own members? If so, how do you deal with this question of prenotice to the patient?

Dr Wand: It is contained in the standards that psychologists are expected to adhere to.

Mr Carrothers: Are they to tell their patients that their records might be looked at by your body?

Dr Quarrington: They are required to inform the patient of those others who will have access to the record or to information from the psychologist. They must be very clear about what the limits of confidentiality are. Where they are working as a team, it is important that a patient or a client knows what others will have access to this information in order to make a judgement about what he should reveal in an interview.

Mr Carrothers: The psychologist probably would give a paper to his new client telling him that, saying: "So-and-so may look at your record. The following bodies may have access to your records," and listing a bunch of people. Is that what happens in practice?

Dr Wand: That is what we expect to happen.

Mr Carrothers: The other question I have is, does your body do spot checks on your members? If so, obviously you are then included in the list of people who walk in.

Dr Wand: Our body is limited to the authority given to us under the act we administer. The authority under the present legislation, which was promulgated in 1960, limits us to responding to complaints. At that point we do have the power to inspect, but no, we do not have the power, as in Quebec for example, to go out and conduct spot-checks.

Mr Carrothers: You do not have an ongoing inspection cycle. Do you know, for instance, in the field of psychiatry, where I assume some of these issues would come up, and I guess a psychiatrist is regulated by the College of Physicians and Surgeons of Ontario, whether that college has the right to walk in and look at these records? I do not think psychiatrists are under any obligation to tell their patients the college might come in.

It would seem those are fairly parallel situations. I am wondering why in your case you would feel there is a difficulty for the college coming in, or whatever other body, maybe your body, to see psychiatric records.

Dr Wand: Perhaps we have a different interpretation of our obligation to obtain informed consent from our clients. We regulate only psychologists. We do not regulate physicians.

Mr Carrothers: I understand that, but what I think you are saying is that the concern is that a patient might be uncomfortable, or you want him to know that when he says something to one of your members, there are certain other bodies that might read that record for another purpose. Therefore, when he tells your member that, the patient should know.

Dr Wand: Just so that they understand.



Mr Carrothers: I guess what I am saying is that someone under psychiatric care must surely face the same problem, yet I do not think the psychiatrist is under an obligation. The college can certainly go and inspect the records as part of whatever it is doing in order to ensure the psychiatrist is operating properly and carrying out his or her practice properly.

Dr Wand: Yes.

Mr Carrothers: It seems to me those are very parallel situations and I am wondering why in the case of a psychologist you could not be regulated the same way, why you would feel the need to give notice when they do not.

Dr Wand: We are regulated by different bodies and we differ in many respects. For example, we do not prohibit advertising by our members. Advertising must meet certain standards, but there is no prohibition.

Mr Carrothers: I understand that it is different. I guess what I am saying is that if the issue is that the patient should know beforehand that someone else might look at his file other than the psychologist, or in my other example a psychiatrist, it seems that in a psychiatric area that is not done and I am wondering why it would be a difficulty if that were not done in this area as well.

Dr Quarrington: I think you are inviting invidious comparisons here.

Mr Reville: Oh, make them.

Mr Carrothers: I may need you on to understand better.

Dr Quarrington: I think we do manage some affairs better than psychiatrists do. We do get complaints about psychologists that result from failures to comply with this requirement and I would imagine that the College of Physicians and Surgeons of Ontario gets complaints too. It is of concern to patients. It is not an arbitrary matter. It does cause various sorts of discomforts that sometimes are complained about by psychologists, and it is taken as a very serious breach of this requirement of psychologists.

Mr Reville: I want to thank you for your presentation. I agree with what you have had to say. I do not know whether you have had a chance to look at a fact sheet that was produced by the ministry. It is called "Fact Sheet" on the front.

Dr Wand: I fear not.

Mr Reville: It is of interest. I am going to give you one so that you have this information because it covers off some of the points—

Mr Jackson: You are not on Hansard, David.

Mr Reville: It does not matter. I was trying to be courteous here.

Mr Jackson: Some people will defend that observation.

Mr Reville: I do not need to be recorded as courteous because my mother is not alive any more.



It describes some of the ways the bill is intended to operate so it might be of use to you. As you rightly point out, it does not appear on the face of the legislation.

1430

I guess the point you make that is of the most concern to me is that the bill is absent the principles by which the minister will make licensing decisions. I am not quite sure why it is absent. It is a mechanism that is pretty devoid of principles. It talks about need and money, but it does not talk about the sorts of thinking that will go into making these decisions.

One of the points you make is that the regulations do not talk about evaluating the efficacy of an independent health facility. I wonder if the parliamentary assistant or either of the officials want to comment on why we do not have a regulation enabling evaluative mechanisms to be used in rating how well these places are doing. I hope we do. I know this is coming.

Mr Sharpe: I thought we did too. First of all, on the proposal request, clause 5(5)(e), page 5 of the bill, requires a proposal to set out the details of the system that will be used to ensure monitoring of results and so on. Of course, one can always establish as a condition of the licence that be done, but the regulation I thought also had something in there that permitted rates to be established governing the methods and so on, looking at 8 and 9, quality of standards.

Mr Reville: Just to back you up, we are starting at 5(5)(e).

Mr Sharpe: That is quite correct, yes. In 5(5)(e), when the proposal request initially goes out, part of the proposal requirement is that the proposal indicate details of the quality assurance mechanism that result in the outcome measures that are going to be employed at the clinic that will be licensed; that must be there as part of the proposal. In addition to setting specific requirements in the condition of licences—I am just taking a look through the rate-making power because I am almost certain that we had put something in there requiring an outcome measure; let's say 16, requiring and governing the system for monitoring results and so on. So that would be a rate-making authority that—

Mr Reville: What number was that?

Mr Sharpe: Paragraph 33(1)16, towards the bottom, third item from the bottom on page 28 of the bill. That gives us the rate-making power to do the quality assurance things that might be necessary.

Mr Reville: Perhaps the board will look at those and see if in fact the ministry official has satisfied your concern. If not, let us know. You can let us know by letter. We are still going to be here for some time, so you will have a chance to catch up.

One of your concerns related to the patient confidentiality. The fact sheet that I provided you talks about the assessors and inspectors and the fact that they will be either appointees of the College of Physicians and Surgeons of Ontario, which may give you no comfort at all, or they will be agreed to by the licensee, which may give you no comfort either. But the issue of what the patient or the client knows is not addressed anywhere.

I am wondering if the ministry official or the political representative

would indicate whether there is any problem with amending the legislation to require a patient or client to be advised that his records may be looked at by an assessor or an inspector. That would be easy to do, it seems to me, when you come in. You could be given a piece of paper that says that.

Mr Sharpe: To my knowledge, it is not a requirement in any other of our inspection provisions in nursing homes, ambulances, labs, public hospitals and so on.

Mr Reville: Maybe it should be.

Mr Sharpe: I think there is a principle set out in the Freedom of Information & Protection of Privacy Act that speaks of informing individuals of certain rights on the collection of information and principles about where that information might be used. Pursuant to the request made this morning that we put together some material for the committee relating to confidentiality and any rights that patients may have in relation to having this kind of information about how records kept on them might be used, we had intended to look at all possibilities.

Mr Reville: Thank you.

Mr Eves: I do not want to belabour this point of confidentiality to death because I think that it has already been fairly well discussed, except that it may well be very appropriate for the ministry to take a look at who may or may not be inspectors in particular circumstances. I think we had a somewhat similar concern expressed this morning by the chiropractors, and now we have psychologists expressing the same concern. We know that inspectors may or may not be members of the College of Physicians and Surgeons of Ontario. As Mr Reville says, that may or may not give some solace to other health care professionals. So I think that is one area that certainly bears some looking at.

Mr Keyes: Mr Chairman, I will just mention to Mr Eves that I do not think he was here the day before yesterday when we filed the amendment which applies to each of the regulatory bodies that would be there, so the registrar of each regulatory body that is appropriate to the profession would be the one who would—

Mr Eves: Indeed, I did miss it then.

The Chairman: Okay. Any other questions, Mr Eves? Any questions from other members of the committee? Mr Adams?

Mr Adams: I was interested in that point that in fact, as far as you are concerned about quality control, that members of your own profession be involved in that. It was my understanding that this had been addressed.

The other thing I would be interested in asking is, what sorts of opportunities do you and your colleagues see in this bill? I do not want you to simply praise the bill or anything like that, but it does seem to me that there are various situations in which physicians and psychologists work together and so on, that you are involved in teams in various situations and that the clinics which are envisaged here are an opportunity for that kind of thing. Without your having to praise the bill too much, can you tell me if you sense some advantage?

Dr Wand: I guess all we said in our preface was that we saw the

possibility of some of these independent health facilities including psychological services. I wonder if Dr Quarrington might have a comment.

Dr Quarrington: First of all, I think you should be aware that most general hospitals do have psychologists on their staff. In some cases, they may be organized with the department of psychiatry. My guess would be that in most cases they are organized as an independent department and they engage in diagnostic work for a variety of physicians, general practitioners but also specialists in a variety of areas, and some of that work obviously has to be done within a hospital context.

Another service they provide, and again to patients with a variety of problems, is psychotherapy, and this would be somewhat similar to the sort of services rendered by psychiatrists. But this sort of work probably could be and should be pursued in a free-standing organization. It need not be taking place, taking up the space, in a hospital. This means there will be a number of visits made by this individual, but no other person seen; simply one or two appointments a week kept over a period of a number of months.

Mr Adams: So a community setting would be appropriate for that?

Dr Quarrington: Yes.

Mr Adams: You see I had sensed—I have met your colleagues in various situations. You mentioned the hospital one. I know of some in that and that we have a children's health centre and I have met them there. Then, of course, at both of our local school boards, I have met them there. Then I am aware of your colleagues operating in private practice and so on. It seems to me that there is already a sort of community base and that clinics, the sort of thing that is envisaged here, not to take away any of those, would enhance their position in the community.

Dr Quarrington: Yes, that is the reason we felt it important to speak to the bill, because we do think it does have potential. We cannot point to many organizations that are established and free-standing and would obviously come under the licensing concerns here, although we do know of some psychologists who are serving in such organizations now, but rather we are looking to the future.

Mr Adams: Thank you very much.

The Chairman: If there are no further questions, I would like to thank both of you for coming and taking the time to prepare your presentation to us. We value your input on this important legislation.

Dr Wand: Thank you very much.

1440

The Chairman: Our next presentation is from Laurentian Health Services Ltd; John Newell, manager of occupational health services. Mr Newell, welcome to the committee. You have 15 minutes for your presentation.

#### LAURENTIAN HEALTH SERVICES LTD

Mr Newell: First of all, thank you very much for giving me the opportunity to address you. Perhaps the main reason I am here is that we just wanted you to know that we exist and that as far as we are concerned, we do



operate in the health care system inasmuch as we try and prevent things from happening.

We work with organizations that are in the public and private sectors and we deal with periodic medical examinations, fitness program management, diet and lifestyle seminars. It seems that the bill escaped addressing where we fitted into the system. Looking at the fact sheet—I have just had the chance to go through it briefly—we are not included in that either.

In occupational health, we are involved in consulting, testing and monitoring designated substances, physical fitness for jobs and foreign posting examinations. We also do get involved in studies such as physical fitness, again as related to the workplace. We work with diet and colon cancer studies with the Ludwig Institute for Cancer Research and on mercury exposure with the Ontario Dental Association.

One of our little difficulties happens to be that 99 per cent of our business is billable to the organization. However, when we do see people, occasionally we find that it may be necessary for good medical practice to bill OHIP to provide the person with the opportunity to have an X-ray. Let's say he has not had one in five years, he is a smoker and the physician deems it appropriate. I think it is less than one per cent of our business and it would involve perhaps immunization, an office visit and sometimes a prescription.

From reading the bill, I believe it is the intent of the ministry to focus on medical treatment facilities rather than preventive health or occupational health facilities, including organizations such as Impco Health Services Ltd. If it is the former, maybe it would be appropriate to change the title of the bill to "independent medical treatment facilities."

We are concerned about confidentiality and the other aspects of the administering of the bill, but I think that has been brought up by other organizations.

I think that really the crux of our situation is, where do we fit into the overall scheme of things? If we are outside of it, how do we make sure that we stay out of it where we should be? If we should be within the licensing framework, how should we be in that?

The Chairman: You are coming here to pose a question?

Mr Newell: Yes, partially to pose a question, partially to say that we do exist and that I am also running the same thing with the federal government's general sales tax. We fit in outside that organization as well.

Mr Keyes: I think some debate will need to take place with Laurentian Health Services. We would have to have the ministry's clear understanding when we see a line that says you do provide office visits and some services are charged to OHIP. You would have to have the other information as to whether or not you charge the employer or the individual for that insured service, and do you charge an additional fee, somewhat of a facility fee?

It is going to be difficult for us to know without having more intimate discussions with yourself to really know those mechanics, which you may not want to divulge here today, and then it would be inappropriate to make an on-the-spot assessment as to whether or not you are covered. It will depend on



those issues, whether or not you charge an additional fee other than what is allowed for a visit to the office and whether you charge more than what is allowed for immunization and then whether you charge the individual for that or you charge the employer for that.

Mr Newell: To answer your question, in those circumstances where it is not something that is billable to the organization, it is strictly using the OHIP fee schedule and that is all there would be to it.

Mr Keyes: So at the moment you are saying you are not charging the individual more for the office visit but you bill OHIP for that, and the same for immunization.

Mr Newell: That is right. It is not the intent of our business to be in that area at all.

Mr Keyes: It would be improper to give a full, definitive answer, but if what you have said is true in all cases, you would not be caught by the bill. Should you decide to charge additional fees to the employers, for example, than what you would collect from OHIP, then you probably would be caught.

The Chairman: Mr Carrothers?

Mr Carrothers: Actually, I was just going to ask the ministry to respond to the question. They already have.

The Chairman: Mr Reville?

Mr Reville: I want to thank you for your presentation. I am impressed by your documentation. It is very elegant looking.

I would just comment that I find it amazing that a bill would be introduced and find the parliamentary assistant is unable to answer the question, which is clear and obvious.

Mr Keyes: I am.

Mr Reville: You said you do not know.

Mr Keyes: No, I did not. To correct the record, I did not say that at all.

Mr Reville: You said it would be inappropriate to give a definitive answer, and for a government to come forward with a piece of legislation and not understand what the implications are for corporate fitness operations, of which there are many, just amazes me. I expect before this process is over to learn from the ministry whether Mr Newell's operation is in or out.

The Chairman: Any other questions? Mr Eves, did you have any questions?

Mr Eves: No. Thank you.

The Chairman: Thank you very much, Mr Newell, for appearing before the committee. If there is more definition to the answer than has been presented, you will get it when it develops.

Mr Newell: Thank you very much for the opportunity to come.

The Chairman: Our next delegation is the Bochner Eye Institute, and representing that organization is Dr Harold Stein, the director. Welcome to the committee, Dr Stein. You have 15 minutes for your time, and if you would leave some time for questions, we would appreciate it.

#### BOCHNER EYE INSTITUTE

Dr Stein: I have presented in the handouts that you have basically some of the information that you can read and digest with regard to the cost-effectiveness of having ophthalmology being done in a private or surgical independent health centre. I do not think I need to go over that because that is all in print, but I would like to make a case for the grandfather clause.

I should let you people know first of all that, even though I am a member of the Ontario Medical Association, I am for Bill 147 and I think it will add a lot to the fuel that is needed in the health care system in Ontario.

I started this in 1982, only because of frustrations with the system. I had a waiting list of over 800 patients for eye surgery. This waiting list would have stretched out to something like eight to nine months if somebody were to come along.

I had all sorts of pressures brought on me: pressures by somebody who could no longer drive his or her car, who could not get to work. I said, "Look, I'm sorry, you've got to wait eight months." I had pressures from doctors who would call because they had sent me patients—I was like a little superspecialist in cataracts because of the implants which I pioneered at one point in time in the early years. They were sending me their problem cases and they wanted me to solve them sooner than the seven or eight months it takes to get somebody into a hospital.

#### 1450

It is not that I am not at any hospitals. I am on the Mount Sinai Hospital, I am chief of the department at Scarborough General Hospital and I am also chairman of the operating room committee at Scarborough General Hospital. I have lots of ways and wheels and deals to try to manipulate time, but there is a limitation because there are other, more urgent things that precede elective cataract surgery. Somebody with a broken hip who is off or somebody who just had an accident precedes that in the operating room.

There were constant frustrations going on at that point in time. There would not be a week that there would not be at least seven or eight constant pressure calls to get somebody in ahead of the system, to bump the system, not to wait until they are next. Some of it could be social, somebody had a wedding coming up and the family or whoever they are would put pressure on, but mostly it was doctor pressure that was put on me. There was a choice at that time, because of the frustration, either to move out of the province, which a lot of doctors did—this was before Bill 94—or to try to challenge that and see if we could do something that could at least get the extras, the urgent cases, out of one's hair. I did not want to be the person deciding whether I am going to bump some 75-year-old lady to put in a 40-year-old man because he cannot drive to work any more. I do not want to be that kind of decision-maker. That is difficult to do.

I decided I would not move to the United States. There are, for a person

of my level, many universities looking for heads of departments in the United States. There are at least 20 right now looking for heads of departments to come in. I decided I would make a case for myself here in Canada, which I did, and I established an operating centre, not doing a lot of cases, just doing the urgents and the ones who could not wait and wanted to bump the queue for one reason or another. Most of the reasons were that they needed to get things done faster or there was a problem case, an urgent case, that had to bump the queue somewhere in the system.

I established that in 1982, and I continued that. We recently had to move because I was at the Park Plaza Hotel and they closed that place down for renovations. I moved to another place just around the corner that we structured. I put in my capital and my time in developing that facility, which I use in the same manner I am using it now. I use the hospitals where I can and I use the urgent cases and people who put pressure on me and my staff on a regular basis to work in that scene.

I think you need something out there where you can take care of some of these patients. Eye cases lend themselves very well for this, because (a) they are a low level of risk, (b) you can have somebody with you who monitors them, who takes care of that slight level of risk—as your own little notes show, the infection rate is about one third of what it is in a hospital—(c) they come across friendly people whom they are associated with, whom they have seen before and whom they know and you do not lose that little jungle. In the operating rooms today it is very frustrating. I am chairman of one of the operating rooms. It is very frustrating because you have staff turnover that is tremendous and you have changes from shift work that they have to work on, so you do not have a constancy of somebody who is specialized in a particular area. For eye surgery, this works very well. Patients have been extremely happy with this. That is the end of my presentation.

Mr Carrothers: Thank you for the presentation. I guess I just had one question. There were some statements earlier today that the nature of this legislation and the way it would operate would be unattractive for someone to open a facility. I take from what you have just said that you have no qualms about operating under this legislation or would not feel deterred about applying for and getting a facility that operates under this legislation.

Dr Stein: I have been working on a cost-recovery basis. I have been working on a nonprofit, basically a cost-recovery, basis. For me, the advantage has been to take this pressure off: this extra pressure of doctors calling and people calling to say, "Get my patient in faster than the normal waiting time." For me, I do not care. I am not looking at this as a money-making thing or as cost-making mechanics. I think one does not want to lose money.

Modern cataract surgery—in most cases, surgery is not very expensive, except for cataract surgery. Cataract surgery has changed tremendously in the last 10 years. If you were to do cataract surgery 10 years ago, projecting today's prices, today has to be at least five times that cost, just because we use a lot of machinery, we use disposable tubings, we use a lot of injectibles. For instance one syringe, which has less than a quarter of a cubic centimetre, costs \$75. So it is a very expensive thing to do it well. It is not very expensive to do it to the lowest bidder maybe, but to do it well with proper material is expensive.

Mr Carrothers: You would have no concerns about applying for and operating under this legislation?



Dr Stein: No.

Mr Reville: Thank you, Dr Stein, for your presentation. I was particularly interested in the material in your brief which shows us some cost comparisons that are fascinating. The net saving of almost \$2.2 million a year sounds like a good idea to me.

One of the concerns as expressed by your colleagues in the OMA was that while clearly you are a candidate for grandfathering, because you have been operating prior to June of 1988, if a proposal call went out, somebody might undercut you. Joe's Quick Cataract Surgery might come in at \$722 and you came in at \$735, presumably the ministry, all other things being equal, would let the licence go to Joe's, not to Dr Stein. Then you would not be able to do it at all.

Dr Stein: I would just be back in the same system of using hospitals basically and making decisions on that basis. Yes, that is true. I do not think one would want to do work in cataract surgery with inferior equipment, with inferior materials, on anybody.

Mr Reville: That brings me to the next question, which is perhaps more important. In terms of standards of practice, as far as I am aware, not a whole bunch of work has been done in that area. The CPSO is willing to undertake it and the government indicates it is willing to assist in that connection. In fact, you have suggested that you become a pilot, which would be an ideal way to develop standards of practice for this kind of surgery. Is that something that would interest you, assisting the government and the CPSO in developing standards of practice for cataract surgery?

Dr Stein: Yes, that would interest me.

Mr Reville: There is an offer for you. It is hard to refuse that.

Dr Stein: Yes.

Mr Carrothers: In terms of what Mr Reville has just brought up, I am not sure if Dr Stein or the ministry can answer this. My understanding of this was not that you go to a tender situation where the ministry would say: "We want X, Y and Z. What is your price?" Rather, it would ask people to indicate how they thought a service could be provided and then make choices among that. Maybe the minister had better respond, if she has any comment, whether I am misunderstanding what this legislation does or not.

Hon Mrs Caplan: I am going to ask Bob MacMillan to talk about the request for a proposal process, which in fact is not a tender process at all.

Dr MacMillan: The cost will obviously be a factor, but it will be one of many factors. One would not just go for the bargain basement price when you are dealing with health care and lives. That is why on page 4 of the bill, "The minister shall consider..." and it lists about five or six items in which the last one, of course, is the money factor. Simply put, one would look at the nonprofit aspect. If there were two equal ones, that would take a couple of points; the Canadian factor; the issue of whether or not people were probably already providing that service in the community, maybe in the hospital setting. There would be many other factors, in other words, rather than just whether or not it was cost-efficient.

I think Dr Stein would agree that all doctors try to be cost-efficient



in hospitals or in their private practices. I do not think this bill would suddenly bring forth people who would try to alter that quality of care that we have had in the province.

1500

Dr Stein: I have my staff keep track of costs every three months. They review all the costs, down to the syringes and the needles and the small print, so I know whether the charges I am making for those are really bona fide cost-recovery costs. I certainly do not want to be doing surgery and losing \$200 a case each time, and I do not want to be making \$200 a case. They have this broken down and very fine-tuned as far as the material costs that go into it are concerned, plus the staff time that goes into it. That is not counting capital and not counting rental or any other factor like that.

The Chairman: Mr Jackson, do you have a question?

Mr Jackson: Yes. I guess I would like to pursue this business of the tendering process, or whatever we are calling it. This morning we had one of your colleagues who is in a specialty area and a representative of the Ontario Medical Association indicate a concern and put a fine point to it with respect to certain medications.

We all know the difference between certain drugs in terms of their effect and their cost. She suggested that it is possible, in order to meet your bottom line over the course of your five-year contract, to adjust the administration of certain drugs, some affecting comfort, some affecting risk, but the patient would not be aware of those fine details in all cases.

Of course, the principle of changing drugs is quite common now in Ontario since the drug system was radically changed three years ago. I think that is the area of concern that has been raised, and from your perspective, you are talking about an existing facility where there are no rules for the game that you are currently operating under so that you would then have a series of rules that would now be imposed on you.

In your presentation, you are very optimistic about current conditions in which you are operating, which are all very positive, and bottom lines are very impressive in terms of the report, but I wonder to what extent you have considered seriously the legislation in terms of how that might affect your operation and where you might almost be in a position to say, "I have to surrender the privilege of operating a facility because we can no longer provide it on that basis."

Dr Stein: That is a very real possibility. For instance, we went back seven or eight years ago, before we started using this one syringe that costs \$75 for a quarter of a cubic centimetre. We used air inside the eye, which costs nothing, and a syringe of air. I would not want to compromise myself by going back to air. If it meant the fact that the government was funding it and it meant I could just use air instead of this other syringe, I would not do it.

I think you have to trust the individual to whom you give this contract, or whatever you do, that he is going to do the best, high-performance things that are available, that are written up in the community, written up in the literature and that are done. You cannot start taking shortcuts in all sorts of things just to meet a budget. I think it would be better to close it down.

Mr Jackson: I think all members of this committee would agree with you, but human nature being what it is, and given that, quite frankly, until only recently the health system has been put through such rigid scrutiny in terms of financial accountabilities, there was an attitude among physicians that, for procedures done in the hospital, the hospital will pay and the Ontario health insurance plan will pay.

Dr Stein: Yes.

Mr Jackson: In the litigation-conscious environment which medicine has been subjected to in the last decade, it is also a wise decision to err on the cautious side, but the fear is that operating alone in clinics, there may be, for whatever reason, corners cut.

Now, there are two types here. One is where the government is consciously saying, "We believe that the operation can be done at that level." I mean, the tender in and of itself may suggest you must go back to air injection. That is a different part of the argument which we have heard about. I would not ask you to speculate on that, but you have made it abundantly clear where you stand on that issue. You would not want to operate under that risk.

The Chairman: Are you getting to another question?

Mr Jackson: Yes, I am getting real close to a question here. It is in this sensitive area of the difference between certain practices, where corners will be cut. Ultimately, as has been raised, it may mean the difference between your clinic staying open or not. I am putting a very fine point on it. You do outstanding surgical work but you are operating in an arena where you are not in much competition, and that is the context in which you are before us today. As a committee, we are hoping we can project what life will be like with the legislation.

Dr Stein: I think you can ask for material. Staff is one thing. You can have all sorts of quality of staff, between very cheap people working for you who are not nurses and people who are nurses and so forth, and that is a big cost factor. You can have a breakdown of all your material costs. There is not much difference between one company's syringes and another company's syringes basically, but there is with some of the materials; for instance, the interocular lens implant that we insert. There are differences in quality between one company and another company. You would want to be at least in a position to use the best available lens that is there. If, two years later or a year later, there is one that comes out that is \$25 more, that should be built somewhere into the budget of whatever the service is. I do not think you want to go to the lowest tender always.

Mr Jackson: I know we have run out of time, but—

The Chairman: Mr Jackson, just a moment. Before I allow you to continue, I want to raise to the committee that we have gone over the 15 minutes and I have two other members, now three with Mr Pelissero, who wish to ask this doctor a question. Is there a concurrence on the part of the committee to allow the remaining questions, quickly?

Mr Adams: I think it interesting. We should continue.

The Chairman: It is an interesting presentation, but if we start making exceptions, we are going to be—

Mr Jackson: I will yield because I can always ask the minister privately.

The Chairman: Okay. Shall we proceed then? Very quickly.

Mr Adams: My question is very brief. Before I pose it, I am very intrigued by this business of your having operated out of a hotel. I remember many years ago, when I was at McGill University, listening to a lecture from someone, not in your speciality, who worked out of the Queen Elizabeth Hotel. He simply made the point that his patients checked into the hotel, they had a room, they went and had whatever the procedure was—I forget the speciality now—and then they came out and went back to their hotel room, that simple fact, he felt, was very healthy, that it was better than being in a hospital setting. It always struck me as an interesting example of the negative side of putting people into hospitals. I wonder if you would care to talk a little bit more about that, because we are talking about community-based health here.

Dr Stein: Today there has been a turnaround in eye surgery, where people no longer stay in a hospital; they go in in the morning and they go home the same day. Basically, an outpatient surgical centre does the same thing. If they are from out of town, for instance, we have a tendency to admit them to the hospital. Because they are from out of town, they get a free bed and so forth. In a surgical place, we just say: "Stay in a hotel. I want to see you tomorrow morning." They stay in a hotel with their wife and whatever and they come back tomorrow morning. There has not been a problem and it is a much nicer atmosphere for the patient.

Mr Adams: They recover quickly and so on?

Dr Stein: Yes, everything is the same.

Mr Adams: Do you see through this bill the sort of services that you now provide being made available to a much wider spectrum of people?

Dr Stein: I think so, yes. I think there would be expanded services. In some areas the distribution load is highly placed on certain senior specialists who have heavy lists. Most of the others do not have heavy lists and they can work within the confines of the general hospitals, in an area like downtown Toronto or Metro Toronto, where there are enough beds. That may be a different story than out in Kitchener or Thunder Bay.

Mr Adams: Or in Peterborough, where I am from.

Dr Stein: Or in Peterborough or wherever. That is another story. But in the downtown area there seem to be enough beds for most people to work within the confines. I started this out only because I was senior guy in town with a little speciality.

Mr Adams: That is very interesting.

Mrs O'Neill: One of the worries that some of the presenters have brought to us has been on quality of care. I am wondering if you have to spend time with patients convincing them—they seem to be happy after this has happened—that this is just as good an environment or a better environment than if they were going to the hospital.



Dr Stein: Let me just give you an example. I have never had anybody, that I can remember, after they had had one eye done in a surgical place, who did not want to go back to the surgical place to have the second eye done.

Mr Jackson: Why not? You are jumping ahead of the hospital question—

Dr Stein: No. They do not have to. For the second eye, they do not have to. For the first eye, they cannot drive, they cannot see. Now they are satisfied. Now they could wait a year for the second eye, it does not matter; they have got a good one.

Mrs O'Neill: You are suggesting the quality of care is identical and, in some cases, you suggest, regarding infections, better?

Dr Stein: I think it is better because you are dealing with people who are known entities in the care. The nurses, basically, who are the known entities in the parameter of dealing with those patients, they look after them, they see them beforehand, they give them medication and so forth. They talk to them, they know them and I think it is a better care system.

Mr Pelissero: I want to commend the doctor on two fronts. First, for resisting the temptation to move out of the province in 1982 and set up someplace else, and taking the initiative to relieve the pressures. You said you were doing this because you were receiving calls, and continue to receive calls because of the elective time required, in some cases eight or nine months. Second, in your response to the question by Mr Reville, I believe, with respect to if somebody came with a proposal that meant you could no longer do what you were doing, you said, "So be it." I have to commend you for that as well.

I think you recognize, as you pointed out, that the important thing here is relieving the pressure on the system and I think this is what this piece of legislation does.

Dr Stein: As an add-on, I have my son, who was born in Rochester, Minnesota, at the Mayo Clinic. He has an American passport. He is an ophthalmologist, now trained. He has come back with me. He has been with me two years now. He could have just as easily stayed in the United States with a green card, automatic, without any trouble. But I think the system in Canada is going to improve. I do not think it is going to continue to deteriorate. It is deteriorating in ophthalmology at the hospitals, because we are being pushed out by more urgent cases and more high pathology cases that are used for the hospitals and the hospital operating rooms. We are being squeezed out.

The Chairman: Thank you very much. You have provided very interesting information to the committee.

Mr Jackson: Do you charge a facility fee, or do you find no need at all to have one of the facility fees? We are talking expensive rent. Can you provide this at that much of a discount and that much of a saving and not have a facility fee or any of that?

Dr Stein: Do not misunderstand, I have a facility fee based on the actual itemized list of costs of operation.

Mr Jackson: And the patient is paying for the excess now?

Dr Stein: Yes.



Mr Jackson: That will be eliminated, so your extra billing—

Dr Stein: It will be eliminated only if it is budgeted. Certainly the medical fee, which is billed to OHIP at this moment in time, can nowhere nearly compensate for the material cost. Just putting in implants is an expensive item. There is no way that the surgical fee can absorb any of this kind of cost recovery.

The Chairman: It has been a very interesting presentation and I want to thank you for coming and sharing your experience.

Our next presentation is Mrs Merle Blythe, physiotherapist, and Hubert Mantha, legal counsel. Welcome to the committee. We have approximately 15 minutes. We always appreciate it when you leave some time for questions.

#### MERLE BLYTHE AND HUBERT MANTHA

Mr Mantha: To begin with, Mr Chairman, ladies and gentlemen, this my client, Merle Blythe. I brought her here so that you can see a real, live physiotherapist who has some concerns about the bill and who wanted to make a presentation.

A little background: Mrs Blythe was qualified as a physiotherapist in 1947 at Guy's Hospital, London, England. She began to practise physiotherapy in Ontario in 1952, and except for a two-year period for having a family, she has been practising physiotherapy continuously since then. She is presently working at the North York General Hospital in the physiotherapy department, where she has been for nine-plus years. Prior to that, she has worked in a variety of other clinics, such as the MacGregor clinic, and at the Hamilton General Hospital, where she was a physiotherapist during the rather severe polio epidemic of the 1950s. She is a member of the Ontario Physiotherapy Association and the Canadian Physiotherapy Association, of which she is part of the section on orthopaedic manual therapy. She is a member of the Chartered Society of Physiotherapists in England.

Physiotherapy is her livelihood and her profession and has been so for the last 42 years. She makes it a practice and has purchased several hundred related texts, both medical- and physiotherapy-related, periodicals and papers during that time. She attends seminars and conferences on a regular basis both here and abroad, such as England, many at her own expense. She has prepared reports for use in legal proceedings and has testified in court proceedings.

The presentation she had wanted to make can be shortened considerably, given the presentations that were made earlier, which we have listened to. Primarily, she would like to carry on once she decides to leave North York General Hospital and have the ability to have a health facility as defined by the act and to make a profit doing this. She believes she is qualified to do this as her own professional association believes and as courts have believed in the past.

Therefore, she takes objection to section 10, which provides that a licence is not transferable. I am sure it is appreciated that as soon as one decides that a licence is not transferable, it is not possible to accumulate goodwill. If it is not possible to accumulate goodwill, it is an effective expropriation of a very true value that will have accumulated during the course of her practice.

As an example, if through the structuring of her practice in her own

health facility—and this is just an example; she is not necessarily saying this for herself, but others like her—she can make a profit with 10 physiotherapists working under her supervision at \$50 an hour, and there are 1,000 billable hours a year, that is \$50,000. If that profit can be earned after all management expenses are paid for, that amounts to a goodwill feature, with proper discounting at today's interest rates, of somewhere around \$300,000, \$400,000 or maybe \$500,000.

Her objection is, while it is conceded that the sale of a licence should only be to someone equally qualified, what business is it of the government what the value of the goodwill is? In fact, on the other hand, there are two reasons for allowing the sale of licences and hence the goodwill. One is that goodwill, not only in physiotherapy but in law, medicine, engineering and all businesses, on many occasions really amounts to a pension where perhaps a source of pension funds is not available elsewhere. Why deprive someone of a reward for a long and proper professional life?

To allow the sale of a licence and hence goodwill really is an incentive to the licensee to carry on a proper and carefully monitored practice and, if need be, the inauguration of techniques that are innovative and efficient. Therefore, this can only lead to enhanced quality of health without raising costs along with it.

That is basically her presentation. There are two additional points that you will see. One is section 11. Very briefly, this appears to be a legal hiatus, probably a drafting problem. Section 11 says, "Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal." There does not appear to be a tie-in between section 11 and section 19, which provides in subsection 19(7) that "where, before the expiry of the licence, a licensee has applied for renewal of the licence" then certain rights continue in existence. If that is not tied in together, there could be a legal hiatus that down the road could be defined against the interests of the licensee. So, a quick solution is to say in section 11 "subject to the provisions of section 19." That does tie the two sections together and solves the problem. I have no more to say on that. I believe it is a drafting problem and can be repaired.

#### 1520

Her other concerns are that sections 18 and 19 are protective provisions to make sure that there is no administrative runaway abuse, which has happened and will continue to happen, and that is why these sections are there. Accordingly, we have difficulty in understanding why the government would deny this protection in certain specific cases. Why not have the protection of the hearing apply across the board? For example, if the minister does a particular act, that is remediable, presumably, in cabinet. Why that? What is happening there? Why can we not find out what is happening through a hearing? So, subsections 7(6), 9(5), 9a(4), 18(5), and 21(4)—this is all in paragraph 3 of the proposal—should really be removed or amended so that the protective provisions of sections 8 and 19 are in full force and effect.

For example, subsection 21(4) says in effect that there is no appeal from the divisional court. Why would there be no appeal from the divisional court when we know that approximately 18 per cent of the cases that are appealed from the divisional court to the Court of Appeal are overturned? That means that if there are approximately 20 per cent that are overturned by the Court of Appeal and so on up the line, why deprive someone of the benefit of remedial help if he happens to be inside that 18 per cent?

Those would be the points that she would like to make. She is available here to answer any of your questions.

The Chairman: Thank you very much for the presentation. Questions from the committee, beginning with Mr Carrothers.

Mr Carrothers: You have raised some points here which I would like to explore, maybe to gain a better understanding of how this act is going to work in practice. You have talked about profit. You have talked about selling a facility and the fact that the licence itself is not transferable and the licence has a lifespan of only five years. First, if I have understood the ministry correctly, we have heard this morning that there is an intention to exempt physiotherapy from this act at the present time. Did I understand that correctly?

Mrs Blythe: That is correct.

Mr Carrothers: Also, if I have understood some of the presentations, there are two categories. There are some physiotherapists who can bill the Ontario health insurance plan directly and others who have to work under a doctor. I am presuming your client bills OHIP directly right now. Is that right?

Mr Mantha: She was granted a licence on 18 November 1964 and her office was approved as a participating physiotherapy facility. This is the certificate; I am not sure if any of these have been filed before.

Mr Carrothers: Yes, but she can bill OHIP directly now?

Mr Mantha: That is right.

Mr Carrothers: If I have understood the nature of this legislation, the way it works is that the remuneration for the service comes from that billing to OHIP and the facility fee that would be paid to an independent health facility is almost a cost-recovery situation and therefore it is not an item on which you would make profit.

Mr Mantha: Whether someone can make profit—

Mr Carrothers: It would relate more to the OHIP billing, would it not?

Mr Mantha: It should really relate to the individual rather than have a specific prohibition. In other words, for example, there is nothing in the Legal Aid Act which says a lawyer may not make profit off legal aid. If I can make profit off legal aid, that should be the lawyer's affair.

Mr Carrothers: It seems to me there is nothing in this legislation that is going to stop that. If your client can make a profit on the OHIP fee, she will be able to continue. All this act is doing is creating a situation where there will be a payment for the capital cost, if you will, of the facility in which the activity takes place. At least, that is how I have understood this.

Mr Mantha: Okay.

Mr Carrothers: Also, it would seem to me that in terms of selling a physiotherapy clinic, the value you are selling is going to be the client list, the equipment and the lease.



Mr Mantha: And the licence for that facility.

Mr Carrothers: Does it necessarily have to? You were talking about retirement and getting value for having put in the effort of operating the facility over time. It would seem that it is there and that you do not have to have a value in the licence in order to get that. If she has an office space, she could give that over to someone else or sell it as a package, the client contacts and whatever equipment is there, and make a profit. That would seem to me, if I have understood goodwill in any transfer I have dealt with, the essence of the goodwill, usually.

Mr Mantha: And a licensed facility surely would be part of it.

Mr Carrothers: I think there is an intent here not to have that licence become an item that has a value attached to it. I guess I am saying that in order to give your client return, it does not have to have a value. She can get that out of the lease and the residual value in equipment, and presumably, if I have understood the sale of a legal practice, it is the client list that is the value.

Mr Mantha: Right.

Mr Carrothers: That would be the same. If she is selling off, and if the new person is licensed under OHIP, that is where he would make his money and his profit. I am wondering why you would need a transferable licence to produce the result that your client is looking for. I have explained why I do not think so. Maybe you have a response.

Mr Mantha: We are of the opinion that it would have some value. Otherwise, why get it?

Mr Carrothers: To operate, to get the capital remuneration to offset your capital costs.

Mr Mantha: And if profit is possible from that remuneration.

Mr Carrothers: That is through the OHIP billing, though.

Mr Mantha: That is right, if it is possible.

Mr Carrothers: Under any health facility, if I have understood this correctly, and nobody is chiming in to tell me I am all wet yet—

Mr J. B. Nixon: You are all wet.

The Chairman: You asked for it.

Mr Carrothers: —it is a cost-recovery situation in that there would not be a profit made by a facility based on that facility fee. If any profit is made, if any sort of gains can be made, they are on the OHIP fee that is paid to the facility or the operator, on those two sources of funds. The important one is the OHIP fee.

Mr Mantha: That is right. Let's say, for example, the facility fee is \$20 for a half-hour. I do not know what it is going to be. She can arrange her management of that facility so that it is only going to cost her \$15.

Mr Carrothers: Assuming she now has access to OHIP billing, that would be there even if she became one of these facilities.



Mr Mantha: That \$5 profit is a profit that arises out of her being licensed.

Mr Carrothers: Am I being cut off, Mr Chairman?

The Chairman: We are almost at the limit of our time. Before I let you go on, I want to check if there is anybody else.

Mr Carrothers: I have one more question, or comment.

The Chairman: Okay. We have until 3:30 on this one, so carry on.

Mr Carrothers: You mentioned the five-year span of licences. The reaction I have had to that is, from my experience, generally accepted accounting practices call for you to write off equipment, usually over a five-year period, which is an interesting correspondence and would seem to me to fit back in again to this cost-recovery thing.

The licence is almost a permit, if you will, to access funds from the government to offset your capital costs. It lasts for five years, which almost equates to what an accountant would tell you to do with that equipment in terms of depreciating it over the lifespan. Therefore, when you come to buy new equipment—because presumably equipment needs to be replaced every five years; it has probably become obsolete in this field, even in physiotherapy—you start all over again.

Mr Mantha: If there is no problem, why specifically legislate against it? That is her point. That is the point she is making.

Mr Carrothers: Maybe the ministry has a response.

Hon Mrs Caplan: We certainly will have an opportunity to have those discussions on corporate structures and entities through clause-by-clause. I can tell you that the intention is to look at nonprofit preference within the legislation. We are focusing on the service that is provided, the opportunity to address the need for a facility fee to cover overhead costs that were not contemplated as part of the professional fee and, in our requests for proposals, to have the flexibility to respond appropriately to the different communities in which that service will be offered. It is our view, however, that the licence itself should not carry an intrinsic value and be traded as a commodity.

Mr Carrothers: I have no more questions.

The Chairman: Mr Jackson, I asked before and your hand did not go up, but carry on.

1530

Mr Jackson: The minister did clarify her government's position, because in Tuesday's statements the reference was made to nursing homes where they change hands and there is the value attached to the goodwill and so on, but if I can raise a question, it would be with respect to my limited access to physiotherapists and the fact that I have had the option to go to one all paid by OHIP and I have had the option to go to one who specifically met my needs for a particular sports injury that will remain nameless.

I guess your presentation strikes a chord with me from the other side of the argument, which has to do with the fact that it would be of great interest to me to make sure that if Mrs Blythe was taking care of me and she lost her licence or was no longer able to operate in that clinic and therefore was back out in private practice without options to bill, I am faced with the decision of having to go into my own pocket to receive those services, which for the previous five years I had access to at no personal expense.

I think that is another way of approaching your argument in the concept of losing that five-year licence and not having a value to transfer. From personal experience, I would agree that there should be some concern raised about having access to the consistency of that. In physiotherapy that is a very important issue, as it is in chiropractic services and I am sure in several others, as opposed to resetting a broken arm or other services that may be done on a clinic basis. You may wish to comment on that.

Mr Mantha: No comments on that, no. I agree that is another way of putting it.

The Chairman: Thank you very much for coming before the committee and sharing your views with us.

Mrs Blythe: Thank you.

The Chairman: Dr Patrick Hewlett, welcome to the committee. You have approximately 15 minutes for your presentation and we would appreciate your leaving some time for questions.

#### DR PATRICK HEWLETT

Dr Hewlett: Thank you very much. Could I start by just introducing myself? I am a gynaecologist from Women's College Hospital, just across the road. I am in full-time practice and I specialize in fertility services.

I actually trained in Britain, and by an extraordinary coincidence I also qualified at Guy's Hospital where Mrs Blythe qualified, although I have never met Mrs Blythe before. Maybe you will rue the day that Guy's ever trained anyone after this; I do not know.

I came to Canada with my family in 1972 to an extraordinarily high standard of health care. I also came to a lower income. That might surprise you but was a fact.

When the services started to be cut back in Ontario, I started to educate myself about the politics, about what was actually causing the deterioration. I was particularly impressed by the effects of the Canada Health Act and the Health Care Accessibility Act. I hope you will forgive an introduction that gives you a flavour of where I am coming from.

As you know, this Bill 147 will license in essence any place where medical care is provided and a facility fee is charged and it will allow the minister to refuse to issue a licence if the minister wishes. That is under section 9.

In my opinion, the intent of this act is not necessarily to increase community health care services, but to control community health care services, to control the cost of community health care services. It can control costs by

cutting budgets and by cutting community health care services. I think this will enable the ministry to cut staff: physiotherapists, nurses, physicians; they will all fall under this act.

Having said that, I want to say that I think physicians in general unanimously support the intent of the act, the preamble the minister read to the House. The minister has gone, but we agree with the preamble the minister read to the House.

We want expansion of community health care facilities. We want home care services opened. Less than one per cent of the total health care budget is spent on home care services, which is absolutely absurd. We want nursing home facilities expanded. We agree with the Ontario Nursing Home Association's comments about poor facilities. We think the elderly need expanded community health care services.

The Canadian Medical Association and the Ontario Medical Association produced detailed reports. The CMA one was a very good one produced last July. It has not to my knowledge produced any effect at all at the political level.

Physicians have been very active with lobbying; for example, the antitobacco lobby, cigarette smoking. Physicians want community health care. It is not that we do not want it. What I think most of us are worried about is what this bill can do to those services.

Many of us are very uneasy about rigid, central, Toronto if you like, government control of the health care services. The minister will be the one who decides what happens in terms of community health care services. We believe the local communities can best provide their own facilities. They can decide what is needed. They are far better placed to do that than a central and somewhat larger bureaucracy.

We think there should be a section in this act that would allow local communities to run and fund health care facilities even if the government refuses that licence. This would blend with the government's aim of opening up community health care. It would blend with the Premier's Council on Health Strategy which talked about the consumers having a right to decide how they want their health care delivered in their community.

I think this act will stifle community health care. It will not encourage new developments in community health care. It is going to be dollars and not needs that decide what happens in the community health care service. That is what frightens me about this bill. Even the application for a licence is controlled. I put it to you that it is tightly controlled. The minister has to ask for a proposal. The direction of health care will be entirely central.

The next point is the business of fair business practice. I think it bothers many of us that—incidentally, fairness to owners of facilities, not doctors; I do not care about doctors—the owners of health care facilities having a licence to provide health care will have no way of transferring that licence. It is all very well to talk about: "You can sell the facility. You can sell the building." It is useless if you cannot provide the service that you are licensed to provide. That licence is what provides the life force, if you like, of that whole institution.

There must at least be a reasonable way of compensating people whose private property and private lives are expropriated. Their very ability to



provide themselves with a pension, as we heard 10 minutes ago, is threatened by this act.

The next thing I will talk about is a personal thing, but my preference after 25 years in practice and 47 years on earth is that the general practitioner provides a good, reliable way of organizing health care. The general practitioner is usually a trusted friend, knows where the facilities are, knows where the services are and can direct or provide that work himself in the community.

Under this new act, physios, nurses, doctors, community health care centres will be under direct government control on global budgets. It will not be the concept I like, and many people do not, of the general practitioner providing the health care services.

As you know, global budgets can be imposed. That does not mean a physio or a nurse or a doctor gets a salary. It means: "There is \$1 million. Go and run your clinic." It does not mean salaries. It is not fair on the people in that community to have to be funded from a fixed global budget system.

I think there will be political decisions and arbitrary decisions about where community health care facilities are. That may be a cynical comment but I think politics will decide what happens to community health care and that really frightens me.

I think it should be local needs, not political needs, that decide where those facilities go. I cannot understand Dr Stein, and I have spoken to him about it, but I cannot understand his enthusiasm for this bill because I think the first thing it will do is to close down the sort of initiative he started. If you cannot get a licence, if the government will not pay an appropriate facility fee, then that service will not be provided, full stop. So I think there should be safeguards for patients if the ministry closes a facility or refuses to licence a facility.

The other thing is the power this act gives the minister over medical services. It is enormous power. It does not address the problem that wealthy patients will still be able to go to the United States. People who want to skip the waiting list and can afford it can still go down there. That two-tiered system will not be addressed at all by this act.

1540

I have to say that there must be an expansion of the bureaucracy to run this act, not of people who are providing health care but of people to run it. There is going to be an enormous expansion to look after this new administrative level in community health care.

I am sure you have heard about this 100 times, but the next thing that is important to me is confidentiality. The very fact that an assessor will be allowed to go into a community health care facility and take records and specimens and so forth fills many of us with horror. I think the loss of human and civil rights may even be taken to the Supreme Court under section 7.

Can you imagine if abortions, venereal disease, psychiatric care, cancer, AIDS or any of these things become common knowledge to anyone who goes in to investigate some supposed infraction under this bill? I think there should be no place in health care legislation allowing access to this type of medical information without very strict legal safeguards. I mean, imagine your



own medical records being available to anyone who wants to look at them under the power of this act. It really is extraordinary that is going to be allowed.

We have already had the situation in Quebec where civil servants called patients to find out if they had had abortions. This type of lack of confidentiality has to be stopped and this act will do nothing but expand that lack of confidentiality.

In summary, I guess I am saying that I think this act should be opened up. We should be allowing health care services to function even if the minister decides not to fund them or does not allow a licence for one reason or another. I wish I had the power of words to put over to you just how strongly many of us feel about what this going to do to community health care services.

I was very impressed by an episode in Britain in 1972, the year before I came here, where I was called in the early hours of the morning to a man who was vomiting blood at home. I could not get an ambulance, an emergency department or a bed in a hospital. That man could have been in the jungles of Borneo for all the good the National Health Service was doing him. What worries me is that this type of central control, very similar to the type that was set up in Britain in 1947, will in fact lead to that same sort of situation.

Thank you for listening and for staying awake. You must be getting very fed up with this bill.

The Chairman: You must have been a very interesting presentation because I have a whole list of names here. I will start with Mr Reville.

Mr Reville: I have had the benefit of talking with you on a number of occasions, Dr Hewlett, and I appreciate your presentation here today. I do not really have any questions to ask you. Obviously, you have made the government members feel very uncomfortable with your statement today, so perhaps they will ask you questions to try to reassure themselves that this bill is not as bad as you say it is. I think the concerns you have are very serious concerns that the government members are going to have to address as they get ready to vote for this bill.

Mr Eves: I do not know if you had the opportunity, Dr Hewlett, to look at the Ontario Medical Association's presentation, but many of the comments you made are remarkably similar to some of the things it pointed out in its submission this morning. They made a very strong statement, and I think you have reiterated it, that in their opinion this is a licensing procedure that puts cost considerations ahead of quality care. They go on to say that the control is held by the Minister of Health (Mrs Caplan) and cabinet. Can you, as a physician, I suppose, and somebody who has had a great deal of experience in the health care system, offer any other reason for the rather significant amount of unilateral power that is purported to be given to the minister and ministry under this proposed piece of legislation?

Dr Hewlett: My interpretation is that this is a cost-containment exercise, that the minister has to gain control of funding of health care services and that the only way she can do that is by controlling the supply of those services. I personally feel that is the wrong way of providing community health care.

Mr Eves: The other issue I would like to comment on very briefly is the issue of confidentiality because a great many of the submissions we have heard today, and I am sure will continue to hear in the future, centre around this area of confidentiality. The Ministry of Health has pointed out that confidentiality is not a problem in its opinion, because under section 30 if somebody breaches confidentiality he can be prosecuted. That is nice. I suppose rape is not a problem because if somebody rapes somebody we can catch him afterwards and put him in jail. It is still a problem to the victim of the rape and it is a problem to the person whose confidentiality has been breached.

I think what I have heard in the few submissions I have heard here today is that such things as patients' records should be very tightly regulated and secured. I am sure, I suppose, there is going to be some degree, and there is some degree now through the College of Physicians and Surgeons of Ontario, of access to patients' information, but I think the ministry is missing the point if it thinks that because that already exists with respect to the college, it is all right to allow patients' records to be accessed by civil servants, or by the government, or by bureaucrats or by any inspector the minister or the director of the independent health facilities chooses.

I see a big difference. Maybe I am a voice in the wilderness, but I do not think so from some of the delegations and submissions we have heard here today.

The Chairman: I am not sure there was a question there. Do you wish to respond?

Mr Eves: I said it was a statement.

The Chairman: Okay. Now, several government members beginning with Mr Adams.

Mr Adams: Dr Hewlett, when I was listening to your presentation, I was wondering if we were reading the same bill. Have you seen it with the suggested amendments, as it is in its present form?

Dr Hewlett: I saw the original bill and then I saw the amendments that were published about four or five weeks ago. It was difficult to get them, but I got them.

Mr Adams: Why was it difficult to get them?

Dr Hewlett: I was told they were secret and that I was not to see them. I got them eventually from the—

The Chairman: We were told the clerk mailed them to everyone who had indicated a desire to appear before this committee.

Dr Hewlett: I have them. In fact, I got them through the Progressive Conservative Party. They got me a copy.

Mr Adams: They certainly should have been available. This is a legislative committee. It is not a party or a government organization and they certainly should be available and they were available to other people.

Anyway, it is just that I felt we were reading a different bill. You are talking about rigidity in the system. I represent Peterborough, and the greatest rigidity I find is the control in the bureaucracy of the hospitals

and particularly, by the way, the Toronto hospitals. These, as institutions—it is understandable if you study institutional behaviour that institutions become very strong like that. They have an enormous bailiwick to protect. It is not in the interest of the institutions, and I suspect by the way of many people associated with those institutions, to really move into community-based health care. The hospitals consciously or unconsciously want to retain the control in the hospitals. The Toronto hospitals in particular want to do that and the people associated with them such as yourself.

Now, to me, this bill presents an opportunity for reasonably monitored quality health care in my community. It represents a possibility for something different to what we have had heretofore in our hospitals. How you can see this as some sort of a threat to community-based health care is beyond me. Can you give me some reason? I mean, do you work in the community now in some other way?

Dr Hewlett: May I respond?

The Chairman: We are here to listen to you.

Mr Adams: Please; my question is addressed to you.

Dr Hewlett: If I can answer the last question first, I work in a hospital; I do not represent a hospital. I do not have anything to do with the hospital except that it is the basis of my operative surgical practice. My office practice, where I do 90 per cent of my work, I guess you could classify as a community service.

On your first question let me talk about—for example, I just heard Dr Stein's presentation as I came in. The scenario I put to you, under this bill, is that Dr Stein says there is a waiting list at the hospital to have cataract surgery and it could be done much better outside the hospital in a clinic. He then has to ask the minister whether the minister will request him to set up a unit. If the minister says, "Yes, I do request you to set up a unit under this act," he then has to submit a request to the minister.

The minister then has to ask other people to put in assessments of what they think it would cost to put in a unit. The minister has immediately taken direct control of that nonhospital unit under this new act. His ability to set up an outpatient facility, as he did in 1981, I think he said, would be completely under the thumb of the ministry under this act. That is the big difference I see between what exists now and what would exist if this act were in place.

1550

Mr Adams: Well—

The Chairman: Mr Adams, please.

Mr Adams: No really, Mr Chairman, it seems to me there are a number of—

The Chairman: Do not say, "No, Mr Chairman." I am chairing the meeting and we are over time.

Mr Adams: We had that exchange—three minutes.



The Chairman: We are over time, over the 15 minutes, and I am just going to check with the committee whether it agrees to go further.

Mr Adams: For the record, we have had it explained before. I would like this matter of ministerial power explained again, I would like the proposals process explained again and I would like this concept of a fixed global budget explained again. These things have been explained before. The doctor appears, he makes these statements.

The Chairman: Just wait a minute.

Mr Adams: They have been explained previously. I think it is an open public hearing. We are supposed to be trying to expose all opinions on this matter.

The Chairman: I am trying to follow the time guidelines which the committee itself has set, so I am going to check with the committee. I am going to let the committee know that I have on the list Mr Daigeler, Mrs Cunningham, Mrs Smith and Mrs O'Neill.

Mrs E. J. Smith: I will withdraw my name.

The Chairman: Is there agreement that we extend the time of this delegation to allow those questions? Any objection to that? Okay. I just wanted to check, Mr Adams.

Mr Adams: That is fine.

Mrs Cunningham: Just so the committee is well informed, you recognized me before you recognized Mr Reville, because you nodded to me. He then snapped his fingers and you nodded to him. He has already spoken, so I do intend to speak. In fairness, I have not asked very often.

The Chairman: Do you want an explanation for my choice of order?

Mrs Cunningham: No, I do not. I have no explanation. I just know that if I was recognized first, I will be on, if he has already spoken.

Mr Reville: Sexism, that is all.

The Chairman: I generally go to people in the order they requested.

Mrs Cunningham: I know you do.

The Chairman: However, I do give preference to the two opposition critics, in the order of opposition party and then the third party, ahead of other people who have requested. Other than that, I go in order.

Mr Reville: A nice chairman he is too.

Mrs Cunningham: I am graciously waiting my turn.

Mr Adams: For myself, I would be more than willing to have extra time for this. If we have unsupported assertions of this magnitude, I think they should be explained.

The Chairman: You have made your request that the ministry comment briefly and we will ask that be done. Now or later? Okay, it is going to be



done later.

Mr Daigeler: Quite frankly, Mr Chairman, I support you in your efforts to keep the questions to questions rather than to long statements on anyone's part.

Mrs Cunningham: Before or after you speak?

Mr Daigeler: At all times.

Mrs Cunningham: Starting now or next meeting?

Mr Daigeler: If I understand, Dr Hewlett, you said that even if the minister or the ministry were to refuse a licence, the community group should be able to set up a clinic anyway. Are there any instances, I would say the world over, where this is possible? Do you not see or would you not share my view that this would open the health field to any kind of practice that could be to the detriment of individuals? Who is representing the interests of the individual or of the public in that case?

Dr Hewlett: There are two points here: you are talking about standards of care and you are talking about the licence enabling you to do a particular service in the community. They are two completely different things.

Mr Daigeler: I would not agree with you.

Dr Hewlett: I am sorry, I do not understand.

The Chairman: Allow Dr Hewlett answer the question, please.

Dr Hewlett: The first point is, if you are talking about quality of care, which I think is very important, I would agree that standards, guidelines are vitally important. They exist at the moment. This new act alters them in many respects, but they exist at the moment. But if you are talking about a licence to actually provide a health care service, I would put it to you that has nothing to do with quality of care, nothing at all; that is simply the ability to provide a service. Every other western democracy has the right to provide health care as long as the quality is assured, every single one except—if this act goes through—Ontario, which will make it illegal to provide health care services of any standard, no matter how high the standard, no matter how good the cataract surgeon is, without the minister's permission.

I am sorry I cannot respond to Mr Adams, because it is unsettling to be told that I am making unsubstantiated claims. All these are written clearly in the act.

Mr Adams: I suggest that is another one.

Mr Reville: You are not supposed to harass the deputants.

Mr Adams: I am sorry. Excuse me.

Mrs Cunningham: I appreciate your presentation and will be quoting you from time to time, because I share your concerns.

One of the statements you made was that the direction of the health care in Ontario is entirely central, I think those were the words you used, driven centrally.

Of course, if you make that statement out in the community and anyone from the government sitting there will say you are wrong, because the local district health councils will define the need. You are aware of that process?

Dr Hewlett: I am.

Mrs Cunningham: I find it most interesting, you being from the United Kingdom and my having spent some time there more recently looking at the role of the district health councils, which had a very large role in the years that you describe, the role is now being taken away from the district health councils for the very reasons that you have described here today. And yet, here in Ontario, we are giving the power that the decision—the procedure to apply for a licence to the district health councils.

The Chairman: Do you want the doctor to answer your question?

Mrs Cunningham: They have to define the need and make the recommendation. I wonder if you would respond to that in some way?

Dr Hewlett: I think the district health councils are a very important concept. They do not work at the present time.

Mrs Cunningham: That is right.

Dr Hewlett: The Toronto district health council employs 16 people, can you imagine, to look after four or five million people. It obviously is not working at the present time. My problem is that if the district health council says something is needed, it is still the ministry's right to say, "Yes, but we won't fund it. You're not allowed to do it."

Mrs Cunningham: That happens now daily.

Dr Hewlett: I know it happens now, but it will happen in the community health care service and there will be no way of providing that service once this act is in place. It will be illegal to open up another facility. My point is if, in fact, you said as far as the quality is concerned it has got to be superlative, but we will let you open it as long as we do not license it and pay for it, then I would have no complaint. District health councils are very important, I agree.

Mrs O'Neill: What I would like to have added to the list of things explained are the inspectors and who they are. I understand they are not bureaucrats, as has been stated by one other member of this committee, and I would like that clarified.

Mr Keyes: We have had a couple of requests for explanations. Are they coming now or at the end of the hearings?

The Chairman: No, no, I meant at the end of the questions today, we would take, with the forbearance of the committee, about three minutes for Dr MacMillan to once again reiterate the issue of confidentiality and the process—

Mr Keyes: Do you want to do it now or after the next delegation?

The Chairman: No, right now.

Mr Keyes: Right now, okay.

The Chairman: While Dr Hewlett is here.

Mr Keyes: I think I can be very brief. It is a great task you have asked of me in three minutes. First of all, the district health councils are working in respect of recommending to the minister where additions and needs are in the community. The University of Toronto has been very deeply involved with establishing how the DHC will have a very strong role in giving that information. So the input, the decisions and the needs are being assessed by the community through the DHC. The ministry traditionally responds to those priorities by the DHC.

With regard to the confidentiality in unlicensed facilities, there will be nothing different than the way you have been practising for years, and that is that the College of Physicians and Surgeons of Ontario at any time can come in, either because they are suspicious of something with regard to the care given in your practice, or if I, as the executive director of Ontario health insurance plan, recommend a review by the college, they have gone in for a number of years, as you are well aware.

There will not be anything different because there will not be any civil servant inspectors in unlicensed facilities. As far as licensed facilities, that same role will be carried by the college of physicians and surgeons or in the case of service rendered, let's say by physiotherapists, it would be the college responsible for physiotherapy if the amendment passes. The only role of bureaucratic inspectors will be for the physical plant and meeting the requirements of that particular area of inspection. They will not be assessing quality of care and patient records.

The third one was funding. You keep referring to global funding, as if that is a fait accompli. All our information put out says that there will be a mutually agreeable form of funding by the person receiving the licence. That could be fee-for-service, it could be global, it could be a combination of a number of ways to fund.

As far as the quality of care, as you are well aware, anybody now can set up anything they want, anywhere in Ontario without asking anybody and operate on patients without ever having any kind of quality review whatsoever. The act will mandate, of course, that any of these intricate diagnostic and surgical procedures will now be subject to a scrutiny and a set of standards set by the college and reviewed by the college.

1600

The Chairman: Dr Hewlett, I want to thank you for your presentation and for taking the time to come here and share your thoughts with the committee. Just before you leave, I want to report that the clerk has searched his record, and the letters with the amended bill went out on 5 June to your address at 851 Grenville St.

Dr Hewlett: Well, that is the wrong address.

The Chairman: A point of order?

Mr Reville: On a point of order: I just want to give notice that I wanted to table with the clerk and the committee two amendments to the bill so that you can study them.

The Chairman: Oh, good.



Mr Reville: You may recognize that they both came out of the mouth of a chiropractor this morning.

Mr Carrothers: That is very considerate.

Mrs E. J. Smith: You go to a chiropractor, David?

Mr Reville: I do. I have a back problem.

Mr Pelissero: Just a point of clarification: the doctor just mentioned that he could not open another facility. I am assuming that another facility could be opened if they were willing to live within the OHIP fee schedules. The only facilities we are talking about licensing are those that want to apply for a facility fee, so we are not restricting from opening another facility those who are willing to live with the OHIP fee schedules. Is that correct?

Mr Keyes: That is correct.

The Chairman: Our final presentation today is from Stephen Bohus. Did I pronounce your name right?

Mr Bohus: Yes, you did.

The Chairman: Welcome to the committee. You have 15 minutes and members of the committee usually appreciate when you leave some of that time for questions, as you could see from the previous presentation.

#### STEPHEN BOHUS

Mr Bohus: Yes, I know everyone is anxious to get home. I guess I will introduce myself. I am Stephen Bohus and I am just a university student at the moment. First of all I would like to thank everyone for giving me the opportunity to address you. I found out about Bill 147 through research on extra-billing. My main concern about Bill 147 is in regard to therapeutic abortions and the establishment of abortion clinics throughout the province. That is what my report deals mainly with.

I really do not believe in any type of expansion by having free-standing abortion committees. First of all, I will say quite outright that I do not believe abortion is a health service per se, because "therapeutic" actually means curing a disease; an abortion does not cure any known disease and so on. I will not personally classify abortion as a health service. Of course, in an abortion there is termination of a potentially human life, which is also another complication in this heated issue.

The first point that I wanted to bring up concerns abortions as a whole. I have seen throughout Canada and in other surveys that if you establish more abortion clinics throughout the province, the more chances there are—Where is the outreach to women who are going through crisis pregnancies and actually need help? It is my firm belief there are some doctors who will try to give a pregnant woman options, but when you are making \$100 through OHIP payment, the facility fee and so on, it is a simple matter to just line up abortion patients and convince them that this is best for them. For a five-minute operation it is not a bad deal.

I know there is counselling. However, when you are counselling from a facility which does abortions, it would be almost fair to say that it would be



counselling in favour of abortion. We know the case of Barbara Dodd, who did not even receive any counselling at the Morgentaler clinic, and she now regrets her abortion decision.

One of the main points I want to bring out is that I received a document—it is on the fifth last page—and it outlines all the hospitals in the province which performed therapeutic abortions, or elective abortions, as I shall call them, in 1987. I obtained this under the freedom-of-information act and it shows that there were 79 hospitals which performed them and there were two other clinics which performed abortions, although section 251 of the Criminal Code prohibited it.

The interesting fact is that 13 of these hospitals only had 20 abortions or less a year, so there is no big urgent need to establish abortion committees and abortion clinics throughout the country or throughout the province. I think there are more than enough with 79 hospitals. How many clinics do we need? How many abortion facilities do we need in this province, considering a lot of them are underused and they are regionally well spaced?

To establish abortion clinics—in some communities, such as Peterborough, you might recall that there was a public outcry when there was an abortion committee to be established in the Peterborough Civic Hospital.

This Bill 147 allows the minister or director to call for the establishment of a health service. A director could just say, "Okay, we need more abortion clinics throughout the province." What can happen with that financially? Why is there such an incentive?

The next thing I want to point out that with abortions in clinics is complications from abortions. Therapeutic Abortions, a publication by Statistics Canada, shows only abortions with the first complication before discharge from the hospital. Most abortions, over 80 per cent, are done on an outpatient basis, so basically the women will go and have the abortion, be under observation for three hours usually, or less, and leave. If they have a subsequent complication, then it will not be reported and it will be recorded in another category.

In my research I have been trying to find long-term reports about complications of therapeutic abortions and I found this very interesting report by Dr Carol Cowell, who practises at the Hospital for Sick Children and also does abortions at Toronto General Hospital. This was a study done on adolescents over a 12-month period, there was a 12-month follow-up, and she noted that 26 per cent of the adolescents following suction curettage and 47 per cent following saline abortions required either treatment for immediate complications or readmission for other complications. This is quite a high rate, of concern.

Also, Carol Cowell noted, "One girl was readmitted in septic shock, with a temperature of 106, but she was a healthy young adolescent, and so fortunately she survived."

Abortion is not the very clean procedure that is documented to be—safe. Here is this report, which is one of the only long-term reports in Canada, stating that abortions can pose a hazard to health. Statistics Canada reports 18 deaths from abortions, just immediate complications as it lists them, that is, usually three hours or less and the first complication, which is a rather poor way of collecting those data. This might show the real morbidity behind abortion.

The basic reasoning is that if you allow abortions in free-standing abortion clinics in little communities and so on, there are going to be complications all the time. There could be major complications—like I mentioned, there were 18 deaths reported by Statistics Canada—with major haemorrhaging, there could be pelvic inflammatory problems, uterus perforation and other problems.

1610

These complications need immediate attention, and if abortions are performed in clinics rather than in hospitals, then there is going to be a wait while the patient is transferred from a clinic to a hospital. There is time lost. It would be a lot safer for therapeutic abortions to be performed in hospitals rather than in clinics, for this obvious reason.

In addition to the physical complications of abortion, there are the psychological complications. I know that there is quite a bit of uncertainty, but I have talked to women who have gone through abortions and have been devastated by them. There is the case of Barbara Dodd—anxiety, guilt, depression. There is always some sort of grief. Dr Cowell's report shows that every single one of the 83 adolescents who had an abortion had a sense of grief following the abortion.

The next thing I want to discuss is our growing health care budget. In 1988, there were 96 hospitals which were predicting deficits for the following year. This is actually, to me, getting out of hand. In Ontario, there has been a 24 per cent increase in the number of doctors since 1984. There is this influx of doctors and these hospitals deficits, and now we are proposing to establish these free-standing abortion clinics, which are already fully provided for by hospitals. An abortion is not an emergency situation. A woman can wait weeks for an abortion. It is not something that has to be done right away.

Also, I just want to discuss the present situation of the Morgentaler and Scott clinics. As you are probably aware, the Morgentaler clinic charges \$250, \$350 or \$500 cash as an administrative cost for the patients, depending on the gestation period. I suspect there is extra-billing, because there would be a flat rate. It does not cost \$250 more to process a woman who is 11 weeks pregnant than one who is 14 weeks pregnant. I do not think that is reasonable to assume, but the bill will allow exemptions for the Scott and Morgentaler clinics, and they will be able to continue business as they have in the past.

Talking about abortion clinics, the interesting thing is the Morgentaler clinic gets an extra \$100.30 from the province. Everywoman's Health Clinic in Vancouver manages to get by on \$250; \$106 of that is from the province and \$144 is from the actual woman having the abortion. That is a flat fee for every woman entering the clinic. You can see this wide variance of fees from province to province and clinic to clinic.

It is my suspicion that although there is this preference for nonprofit organizations, and most organizations will probably make themselves out to be nonprofit, what really can happen is that doctors can charge excessive fees. I do not know. To me, that is obvious. From what I have received from the Freedom of Information and Protection of Privacy Act, the Morgentaler clinic makes about \$2.25 million a year. That is a conservative estimate. So this is profitable medicine.

Finally, I just want to mention the free trade deal. It is interesting

to note the situation with nursing homes at the moment. I think that back in the 1970s there was an amendment to allow private businesses to set up nursing homes subsidized by public money. Now in Ontario, ironically, Bill 147 has been brought in to deal with the free trade deal, and actually it allows a preference to be given for nonprofit organizations.

Let me ask you this: How many people do you know with capital who are going to come forward and say: "Okay, I want to do this to help people, just out of my own heart. I am going to invest hundreds of thousands of dollars into this thing just for nonprofit motives"? If there were people like that, they would have already come forward and invested in the health care system. Basically whoever gets into making independent health facilities for profit, I suspect, can say he is nonprofit by charging excessive fees. There are a very loose controls on the licensing if there were, let's say, any abuses and so on.

Also, I suspect that with, say, abortion clinics there is unnecessary duplication. If you have got hospitals doing 12 or 13 abortions a year and you have this free-standing abortion clinic which is now totally and entirely funded by the province, except for maybe its facility fee, then you are dealing with duplication for administration, renting space and so on. It is just going to drive up the health care costs when we are trying to control them, as I noted, with the 96 hospitals having deficits.

That is about all I have to say. Does anyone have any questions?

The Chairman: You have used your 15 minutes. However, with the indulgence of the committee, perhaps we do have time for one question from Mr Reville.

Mr Reville: I think everybody should have a turn if he wants one.

The Chairman: Okay.

Mr Reville: Each party should have an opportunity to question if it wants to use it.

The Chairman: Okay. Is there agreement to go round, one question to each party? Okay.

Mr Reville: Mr Bohus, thank you for your presentation. I do not mind telling you I disagree with much of what you have said, although I share your conclusion that the bill is flawed.

I want you to be sure that you understand what this bill means, though. Dr Scott and Dr Morgentaler are not exempted; they will be allowed to submit a proposal without going through the proposal call process. I do not know if the ministry will say yes or no, but they are not sort of automatically given a licence. The concern I have is the opposite concern, that the ministry may decide not to give them a licence. Your concern is that they are automatically going to get one, and that is not clear.

Mr Eves: Legally those chances are slim and none, and slim went fishing.

Interjection: I wondered where he had gone to.

Mr Reville: It is the right time of year to go fishing.



I am curious about why you think it is that in your statement women choose to get pregnant. Can you explain that? Clearly you have never been pregnant and are not likely to be, but why would you say that?

Mr Bohus: I would say that because first of all it is obvious people choose to be sexually active or not.

Mr Reville: What they chose to be was sexually active, not pregnant.

Mr Bohus: But then they are taking the responsibility of becoming pregnant if there is no contraceptive which is 100 per cent effective.

Mr Reville: Okay. I do not agree with that, but I was interested in how you came up with that strange statement that women do choose to get pregnant; but not usually those who then decide to have an abortion, in my view.

Mr Bohus: Oh yes, I know.

The Chairman: Mr Eves has nothing. Anyone over here? Mr Adams?

Mr Adams: I actually wondered if the ministry would consider addressing the point that Mr Bohus made about the apparent additional payments that the clinics receive.

Dr MacMillan: Dr Bohus has written to me on this subject and I think I have responded once or twice. I will try to give you that explanation now.

Up until recently, the procedures done at that clinic were always considered to be done in hospital. The clinics in Toronto were the first in Ontario, over much controversy, which set up and initially began billing OHIP for a fee that had been designed as appropriate to an institution where it covered all the overhead. In this particular case, they got into the situation where they were having operating room personnel and anaesthetic machines.

Then along came the request by the college to require standards to be set. This they did last year and set forth a number of other obligations on the part of these clinics, such as preoperative assessments, advice and counselling, types of informed consent procedures and certain levels of standards for the actual procedures performed.

It was at about the same time that we began to differentiate between what was simply extra-billing, what we always considered to be a part of the insured service—like charging another \$1 for a tongue depressor when you went to the doctor for a sore throat, which is clearly extra-billing—as compared to this, which seemed to be more like a facility fee, along with cataracts, laser treatments and so on that are now being done in the community setting. The fees are outdated and do not address the cost of the services being provided. These clearly are the types of fees that will fit into what are determined under the bill to be facility fees.

1620

That does not mean that the services will be funded in the same manner. In fact, probably they will be funded with the augmentation of counselling services, preventive services and other things that may indeed see a reduction in the number of actual abortions and also a fee mechanism that will not reward people for more numbers; possibly it will reward them for fewer numbers.



The Chairman: Thank you very much, Dr MacMillan, and thank you, Mr Bohus for—

Mr Bohus: Mr Chairman, could I ask Dr MacMillan, I just want to clarify a point on—

The Chairman: I do not want this to get into a debate.

Mr Bohus: No, this is just one question.

The Chairman: Okay, a quick question.

Mr Bohus: I have not been able to get a straight answer from the Provincial Auditor or the Ministry of Health, but I was just wondering with Morgentaler's fluctuation—it is \$250 for a woman who is less than 12 weeks pregnant, \$350 for a woman who is 12 to 14 weeks pregnant and \$500 for a woman who is 14 to 16 weeks pregnant. I was wondering, if this were, let's say, an administrative or facility fee, why would there be this fluctuation—a \$250 difference for a few weeks' pregnancy—if it were not extra-billing?

Dr MacMillan: I think the answer is that at this time I cannot provide the answer to that question. I know that increased risks and other initiatives have to be taken into account with advance in gestation; that could be the reason for the extra cost. Clearly, I do not think the costs should be called administrative fees. That is the reason why there is a difference. I think those types of costs and needed extra charges will be something that this bill would empower the ministry to review very carefully.

The Chairman: Is this something that is presently under investigation and review?

Dr MacMillan: It is not as yet. The ministry has taken the position at this time that charges in respect of abortion procedures at private clinics are not in contravention of the Health Care Accessibility Act.

The Chairman: Mr Bohus, you have heard those explanations. We want to thank you for taking the time to come down here as a student to share your views with us.

Members of the committee, that concludes our presentations today. I did have some organizational issues to raise with the committee. Before I go to that, Mr Eves, did you have—

Mr Eves: Mr Chairman, I do not know if you want me to take the time of the committee right now. I still have some questions about the confidentiality issue that I would like to discuss with Dr MacMillan and perhaps other people from the ministry. I can either do that privately, one on one, if you prefer, or I can do it for the benefit of the whole committee. Maybe it is just me who is out to lunch because I was not here on Tuesday.

Mr Carrothers: Questions of that nature would be helpful to the whole committee, or at least to me. I would like to understand your concerns.

The Chairman: Is the committee agreeable to it now? Okay, carry on, Mr Eves.

Mr Eves: Under section 24—

Interjection.

Mr Eves: I will not be here till doomsday, no I will not.

Does the chairman want to do his organizational stuff before Mr Reville leaves?

The Chairman: That would be very helpful.

#### ORGANIZATION

The Chairman: We have some issues relating to our week after next when it is estimated we will conclude our public hearings on the Monday. We have had a request for Debi Mauro to appear, and the question I want to raise is, should she be scheduled for Tuesday morning?

Second, there was a tentative decision that we would begin our clause-by-clause on the 28th, leaving the balance of the week of the 21st clear. I wanted, as chairman, to raise a concern of whether the committee feels that those four days are sufficient to conclude the clause-by-clause. If not, I would prefer we go at it sooner than that so we have a better chance of concluding.

My final point is that we have accommodated everyone who has requested to appear before this committee up to the commencement of the hearings today. There has been a request received, since all those people were scheduled, from the Family Coalition Party. The only commitment that was made was that I would bring that request to the attention of the committee. Those are the questions I wish to pose to the committee. Mr Reville, your comments?

Mr Reville: I would be happy to hear from Ms Mauro as soon as possible, so Tuesday 22 August would be fine.

The Chairman: If an opening develops earlier than that, perhaps—

Mr Reville: Yes, or earlier. I do not have any particular view on when to start the clause-by-clause. I am ready to go whenever. I do not need time after 22 August. I would be prepared to go ahead straight through and get done early, but it is not a big deal for me.

As far as the Family Coalition Party is concerned, I am not hugely interested in facilitating its appearance, but if other people want to hear from it, I will sit here and listen.

Mr Eves: With respect to all those points, I quite agree that we should hear Ms Mauro on 22 August. That is fine with me. I would like to stick to our original timetable of doing clause-by-clause on 28 August. I do not perceive any great problem in doing this in four days.

The Chairman: Including it that week.

Mr Eves: I do not have any huge stack of hidden amendments that I am going to unload on the committee, but I would like a few days after the hearings are completed. I think the committee should probably stick to hearing those delegations from whom we have received requests up to the commencement of the hearings. I think if we start opening up that gate now, it might open wider and wider.

Mr Carrothers: Let me just concur with what Mr Eves said. I think the Tuesday would be an appropriate time for Ms Mauro, and maybe there will be some ministry responses to things. If I got a sense of some of the discussion on Tuesday, there seemed to be some issues that the ministry was going to respond to. It might be appropriate for it to give its answers that day as well. I think the two days would be useful. We have traditionally used the start of the hearings as a cutoff date for witnesses. I think we should stick to that.

The Chairman: If I have it correct then, I suggest that we meet on the Tuesday morning to hear Debi Mauro. We can also use that morning to give any direction we may wish to Alison or to get any information she may have available for us at that time from our legislative researcher on that. Does that make sense, Alison?

Ms Drummond: Certainly. I am certainly planning to do a summary, as I have done in the past.

The Chairman: Could it be ready for that Tuesday morning?

Ms Drummond: Certainly.

The Chairman: Great. That would help us in taking the time. For the balance of the week, we have agreed then that we would not use Wednesday and Thursday and we would commence our clause-by-clause on the Monday following.

Mr Eves: I would like to clarify this point about inspectors, section 24. Is the only time the minister can appoint an inspector under subsection 24(3), when the director is of the opinion that an inspection is necessary or advisable?

Mr Sharpe: The notion of the scheme is set out in the binder in terms of how the interplay works. A number of these provisions, of course, by virtue of the discussions and consultations over the last six weeks to two months, are in the nature of proposed amendments to the bill. Although our legislative draftsman is not with us, he will of course be here in clause-by-clause. This is his best advice as to how to structure this.

I apologize that it does seem to be somewhat fragmented, but the concept is that the inspector appointed by the minister will inspect independent health facilities, licensed facilities, similar to the powers of the minister to appoint inspectors under the Nursing Homes Act, ambulance and laboratory licensing, public hospitals and other examples of that.

The unlicensed facilities, commonly discussed here as doctors' offices, will be assessed and inspected by the College of Physicians and Surgeons of Ontario. These of course are the provisions, as in subsection 24a(1) and subsection 26b(3). As I say, it is scattered, but I hope it has been somewhat better organized in the binders, explaining how inspections and assessments work.

The idea of subsection 24(3) is that the director, who generally has to supervise the maintenance of standards within the independent health facilities that are licensed, will have to form the opinion that it is advisable that an inspection be made to ensure that the act's regulations, limitations and conditions are being complied with. If your question is, "Is that not automatic or can it only be triggered when the director decides that this is appropriate?", yes, it is the latter. One would envisage that there

would be ongoing inspections of these licensed facilities and a schedule would be established to do that, but subsection 24(3) does provide the director with that flexibility to decide when that should be done.

1630

Mr Eves: To me, there seems to be some duplicity, and perhaps this can be further clarified by legal draftsmanship or if I can talk to counsel it may straighten out my concerns, but as I see it, as I read the statute now, under section 24 the minister has quite a broad power to appoint one or more persons as inspectors. He or she does not have to do it only when the director thinks it is necessary or advisable. The duties, the authority or both of an inspector, to use the words of subsection 2, are "in such manner as the minister considers necessary or advisable."

When you turn over to section 24a, it does not say that the director shall give notice to the registrar of the appropriate college, it says "may." There is a big difference in legal terminology between the words "may" and "shall" and they mean exactly what they say. "May" means I may do it and I may not. "Shall" means I have no option under statute; I have to do it. There is a big difference to me.

If you turn to page 26, I think I have the same problem there with respect to differentiation of powers between inspectors appointed by the registrar under subsection 24(3) or inspectors appointed by the minister under subsection 1 and subsection 2. Subsections 1 and 2 are pretty broad in the powers that the minister can to give to an inspector. It does not say they are just for housekeeping, normal, routine inspections.

Those are my problems. As I read what I have been given in black and white, including the amendment that was handed out on Tuesday, which I missed, unless there is something else in the act that I have not found and somebody can point me to, I think there is a lot of ambiguity there in the way it is worded right now and I would just like to get that clarified.

I have no qualms if that is the minister's intention. I have no problem with that, but I would like to see it spelled out a little bit more clearly.

Mr Sharpe: The only point I would make is that in all the provisions that you have mentioned, the minister has the power to appoint inspectors but not to direct an investigation. That obligation rests on other people: the director, the registrar who triggered the inspection assessment obligations. The process is not triggered by the minister and cannot be. It is triggered by someone else who has concerns about ongoing enforcement of the act, quality of care and so on.

If we have missed out in our attempts to draft this properly, then certainly we will correct it, but it would seem to us—

Mr Eves: I am not saying you have or you have not; I would just like to get it clarified in my own mind.

Mr Sharpe: The intention and the way I would read this is that the minister has the authority to appoint inspectors but not to direct them into their process.

Mr Eves: If I can be satisfied that is correct, that solves that problem. I still have a concern about the word "may" as opposed to "shall"



under section 24a. I am mentioning that now because we still have two weeks before we are going to get into clause-by-clause and maybe we can clarify that.

Mr Sharpe: Again, just to explain the language without getting into the principle behind it, of course 24a(1) on top of page 18 permits the director, one might argue, to negotiate with the potential offender without having to trigger a formal investigation with an inspector, even though there are reasonable grounds to believe that section 3 has been offended. If the word were changed to "shall," as soon as that belief existed there would have to be an inspection triggered. That is the effect.

Mr Eves: But is it the effect the way it is worded now? I am not saying a director would do this, but a director could choose not to notify the registrar of the college or the appropriate health profession and could choose not to carry on again under giving notice to the registrar.

Mr Sharpe: The director could choose not to do that, but again, the notion here was that if that were decided upon, it would leave some flexibility to deal directly with the licensed facility in an attempt to work things out without necessarily triggering a formal process.

Mr Eves: My point is, as it was stated here earlier by Dr MacMillan, I believe, that the inspector in all cases would be—not could be—somebody who was appointed by the registrar of that particular health profession. If this word is "may," that is not a fact; it is a possibility. It may be a strong possibility, but it is not a fact, is it?

Mr Sharpe: I believe Dr MacMillan was speaking in terms of unlicensed facilities, doctors' offices. I believe he said that when inspections of licensed facilities were involved—it may be a ministry inspector who would look at things like conditions of the premises and fire safety and things of that sort, but when unlicensed facilities were involved the inspector appointed would have to be someone appointed through the registrar and therefore would have to be, in the case of medically operated facilities, a physician.

Mr Eves: Would have to be? Somebody would have to be appointed by the registrar?

Mr Sharpe: In other words, if it were determined by the director that an investigation should be undertaken as to the breach of section 3 of an unlicensed facility, a doctor's office, and the director wanted to move on that, it would have to be through the registrar of the college.

Mr Eves: What section gives it back to them?

Mr Sharpe: That is a combination of the provisions of subsection 24a(1). Where the director is of the opinion that there is reasonable ground for belief there has been a contravention of section 3, the notice would go to the registrar of the college.

Mr Eves: If he chooses to give it. It says "may."

Mr Sharpe: But if he chose not to give that notice, then there could be no investigation of the unlicensed premise because in subsection 24(3), the provision you mentioned at the beginning of the comment where the director wanted to move and investigate whether there have been breaches of the act, under that provision the scope of their jurisdiction is limited to independent

health facilities, in other words licensed facilities, not to health facilities, which is the doctor's office.

The same is true of assessments under subsection 24b(3), to look at quality and standards. The references to clause 26(1)(a) and subsection 26(1a) again refer to the premises of an independent health facility; in other words, again, a licensed facility.

We have tried to explain it in the material, as I have indicated. I think when legislative counsel is here for the clause-by-clause discussion, perhaps he can better explain the fragmentation of the provisions, of why it was necessary to set it up that way.

Mr. Eves: That might be helpful. Okay.

The Chairman: That concludes the questions. We will meet again on Monday at 2 pm.

The committee adjourned at 1637.









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